(Speaking in Malayalam, the Deputy President, however, permitted Mr. Kunjitomman to have an official interpreter by his side from that afternoon and said that he would be given a convenient seat).

THE TRAVANCORE EZHAVA BILL.

DEPUTY PRESIDENT: We will now resume the discussion of the Ezhava Bill.

The next amendment to be considered is with respect to clause 4.

Clause 4.

Mr. P. Paramesvaran's amendment stands first. Before I call upon Mr. Paramesvaran to move it, I would like to take up Mr. Kumaran's amendment which comes next to it. Mr. Kumaran, before you move your amendment, may I know if it would not be better if the definition of "lineal descendent" is moved at a later stage when the necessity for it arises?

MR. N. KUMARAN: Yes, Sir, it will be more clear if it is moved when the relevant sections are discussed. I do not move it now, if the President will permit me to move it at a later stage.

Permission being granted, the amendment was not moved then.

DEPUTY PRESIDENT: Mr. Paramesvaran, you may move the following amendment:

Separate property should not be construed so as to include any portion of one's *tarwad* or ancestral property whether *makkathayam* or *marumakkathayam* property obtained by an Ezhava.

MR. P. PARAMESVARAN: പ്രത്യേകസ്വത്ത് എന്ന വാക്കിന് ശരിയായ അർത്ഥവിവരണം ഈ വകുപ്പിൽ ഇല്ല. ഈ പദത്തിൽ എന്തെല്ലാമുൾപ്പെടുമെന്ന വ്യക്തമായി വിവരിക്കേണ്ടിയിരിക്കുന്നു. സ്വാർജ്ജിതസ്വത്ത് എന്നപോലെ പൂർണ്ണമായി വിനിയോഗാധികാരമുള്ളതെല്ലാം പ്രത്യേകസ്വത്താകുന്നു. എന്നാൽ ഒരാൾക്ക് ഈ റെഗുലേഷൻപ്രകാരം ലഭിക്കുന്ന മക്കവഴിയായോ മരുമക്കവഴിയായോ ഉള്ള സ്വത്ത് ഉൾപ്പെടുന്നതല്ല.

ഇങ്ങനെ ഒരു വിവരണം കൂടി ഈ വകുപ്പിൽ ചേർക്കേണ്ടതാകുന്നു. ഇങ്ങനെ ചേർക്കുന്നതിന്റെ പരമോദ്ദേശ്യം ഈ റെഗുലേഷൻപ്രകാരം ലഭിക്കുന്ന സ്വത്തിനെ ഒരുത്തന്റെ തോന്ന്യാസമായി വിൽപ്പത്രം കൊടുക്കുന്നതിനോ ഈ സ്വത്തിന്റെ ആദായത്തിന് ഓഹരിക്കാരായ ഭാര്യ, മക്കൾ, ശേഷക്കാർ മുതലായവർക്ക് ഈ സ്വത്തിനാലുള്ള ഗുണം ലഭിക്കാതെ അന്യാധീനപ്പെടുത്തുന്നതിനോ ഇടയാകാതെ കാത്തുകൊള്ളുന്നതിനായിട്ടാകുന്നു. സ്വാർജ്ജിതത്തിനും പൂർവാർജ്ജിതത്തിനും തമ്മിൽ ബലവത്തായ വ്യത്യാസം ഉണ്ടെന്ന് എല്ലാവരും സമ്മതിക്കുന്നുണ്ടല്ലോ

LIBRARY ARCHIVES Kerala Legislative Assembly

[Mr. N. Kumaran.]

വരികിലും മേൽ വിവരിച്ചതുപോലെ ഒരു വ്യത്യാസം വകുതമാക്കിയില്ലെങ്കിൽ പൂർവാജ്ജിതസ്വത്ത് അന്യായമായി നശിക്കാൻ ഇടയായേക്കാം.

The amendment was dropped for want of a seconder.

DEPUTY PRESIDENT: The question is that clause 4, as settled by the Select Committee, do stand part of the bill.

The motion was carried.

Clause 4 was added to the bill.

Clause 5.

MR. K. P. RAMAN PILLAI: I move that the word "legally" in clause 5 be omitted, for the reason that I consider it superfluous.

The amendment fell through for want of a seconder.

DEPUTY PRESIDENT: The next amendment is Mr. Kumaran's. I find that he wants to substitute a whole clause, whereas he practically wants to insert only certain additional words. As a matter of policy, unless you take exception to the clause as drafted by the Select Committee, you should not rewrite the entire clause.

MR. N. KUMARAN: I do not take exception to the drafting of the clause by the Select Committee. I only want to insert "(1), (2) and (3)" with the additional words that follow (3).

DEPUTY PRESIDENT: You may move it in that way then.

MR. N. KUMARAN: My amendment runs as follows:

In clause 5, insert "(1)" between the words "solemnised" and "by" in line 2; "(2)" before "by tying *mangalyasutram*" in line 3; and "or (3) by placing a garland around the neck of the male by the female and *vice versa*," between the words "male" and "whether" in line 4.

My reason for bringing forward this amendment is this. The provision made by the Select Committee does not embrace all the forms of marriage that are now being observed in the community. The section as amended by the Select Committee, refers only to two forms of marriage, namely, one by the presentation of cloth, and the other by tying *mangalyasutram* around the neck of the female by the male. There are other forms of marriage in vogue in the community. If, therefore, a provision was not made in this Regulation for including those forms, the result would be that a large section of the community would become bastards, and those marriages would not be legally valid. In the report of the Law Committee, mention has been made as to the existence of two forms of marriage, one old, and the other, new. In describing the details of the new form of marriage, the Committee says thus: "The essential portion of the ceremony, as its name indicates, consists in the open presentation of the bridal dress by the bridegroom to the bride. The reformed *vivaham* (marriage) is generally solemnised in a form prescribed by Sri Narayana Guru, the religious head of the community.

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The Guru appears to have adopted the form known to Hindu Lawyers as *Prajapatya*, with some alterations. The essentials of this ceremony consist in the following. The bridegroom accepts the hand of the bride offered by the latter's father or other person in parental authority before the assembled guests. The bride then garlands the bridegroom and the latter ties the *Mangalyasutram* around the neck of the bride." And then there are some unimportant parts of the ceremony. The Select Committee have epitomised this ceremony by making one recommendation, namely, "by tying *Mangalyasutram* around the neck of the female by the male". What is generally observed is only a variation of this form. That consists in both the parties, *i. e.*, the bride and the bridegroom, garlanding each other, without any *Mangalyasutram* being tied around the neck of the bride. If that form is not recognized, in cases where the tying of the *Mangalyasutram* does not exist, the marriage will not come under the operation of this section. I, therefore, think that this provision is very necessary and that there is no harm in accepting it.

MR. P. K. NARAYANA PILLAI: May I know if that custom, the garlanding, exists in addition to or in substitution of the presentation of cloth?

MR. N. KUMARAN: In substitution of it.

MR. M. R. MADHAVA VARIAR: I want to know whether the custom of marriage without the presentation of cloth, *i. e.*, by garlanding, is being followed now?

MR. N. KUMARAN: Yes, it is being followed by the community even now in a large number of cases.

MR. M. R. MADHAVA VARIAR: What I wish to know is whether it is accepted by the community.

DEPUTY PRESIDENT: The marriage is accepted by the community. What Mr. Kumaran says is that, if you do not insert that provision, the issues of these marriages may be regarded as bastards.

MR. A. GOVINDA MENON: I second the amendment of Mr. Kumaran.

MR. V. SUBBA AIYAR: Sir, I am not in a position to speak one way or the other as I do not know definitely the customs of the community. All that I say is that the Ezhava Law Committee have observed in their report—and this has been referred to by Mr. Kumaran that the exchange of garlands is incidental to the tying of *mangaliyasutra n.* These are incidents which are not evidently very important; and as the Committee did not recommend this, it was omitted in the Bill. As I am not aware of the existence of such marriages, *i. e.*, garlanding without the tying of *mangalyasutram*, or the presentation of cloth, I will simply remain neutral in regard to this question.

MR. N. RAMAKRISHNA PILLAI: May I know if the addition to the section "or any other recognised manner," would not be sufficient?

LIBRARY ARCHIVES Kerala Legislative Assembly

[Mr. A. Hoogewerf.]

DEPUTY PRESIDENT: That will lead to controversy.

MR. C. P. KOCHUKUNJU PILLAI: I beg to know if Mr. Kumaran will not be satisfied with the adoption of the forms of marriage provided for in the bill with one or two alterations?

DEPUTY PRESIDENT: This is not time for negotiation.

MR. M. GOVINDAN. Sir, I am not quite satisfied with the system of marriage by garlanding. Considered by it elf, it is not the sole essential of any form of marriage obtaining in the community. My idea is, as was suggested by Mr. Narayana Pillai, that it is in addition to cloth-giving. The garlanding system is such a flimsy thing—it is more like a public-meeting business than a marriage (*laughter*)—that it was not considered to be sufficiently solemn for a *Prajapatyam* form of marriage. The reference made by Mr. Kumaran to the Law Committee's report shows that this garlanding goes along with the tying of the *mangalyasutram*. Therefore a separate provision is not necessary. I should, however, be sorry if any individual case of marriage according to this form is renderd invalid owing to the absence of this provision. There are only a few stray cases of the kind, and it would be very desirable to pass this Bill which, I am sure, would make them extinct.

DEPUTY PRESIDENT: Am I to take it that you oppose the amendment?

MR. M. GOVINDAN: I should also like to remain neutral like Mr. Subba Aiyar.

The amendment was then put to the vote and lost.

DEPUTY PRESIDENT: You are rather unfortunate, Mr. Kumaran.

MR. A. HOOGEWERF: The meaning of the *Proviso* to section 5, as it stands, is that the marriage of males below 18 and girls below 16 can be validly contracted with the mutual consent of guardians. The effect of deleting these words will be to make such conjugal union wholly invalid. I contend that marriage is a sacred contract, and it is the contracting parties that have to give consent. If, from their age, they are deemed incompetent to give valid consent, no vicarious consent can validate the union. Moreover, it has to be remembered that infant marriage is not customary in the community, and it is unnecessary, I may almost say mischievous, for the legislature to make a provision for the institution of infant marriage, which is injurious to the healthy development of the community, and which is unanimously condemned by the *intelligentsia* among the communities in which it unfortunately prevails.

I, therefore, move that the words "unless it takes place with the consent of his or her legal guardan," occurring in the proviso to the clause, be deleted.

The amendment was lost for want of a seconder.

LIBRARY ARCHIVES Kerala Legislative Assembly

The question that clause 5, as amended by the Select Committee, do stand part of the Bill was put and carried.

Clause 5 was added to the bill.

Clause 6.

The following amendment was not moved :

MR. N. KUMARAN :

For the words "the commencement of the Regulation" between "after" and "is void," substitute the words "this Regulation comes into force."

MR. A. Hoogewerf's amendment, which was identical, was also not moved.

MR. A. GOVINDA MENON : I move that, between the words "is" and "void," insert the words "illegal and" in line 3, clause 6.

In the section, it is declared that the subsequent marriage of a male or a female during the continuance of a prior marriage and performed after the commencement of the Regulation is void. In the illustration given to that section it is said that such marriages are punishable. I ask, if there is no marriage at all, how you can punish it. Only when the marriage is legal could it be punished. Therefore I move this amendment.

DEPUTY PRESIDENT : All that the section contemplates is that the first marriage should be perfectly valid. The second marriage is void.

MR. T. LAKSHMANA PILLAI : I second Mr. Govinda Menon's amendment.

MR. V. SUBBA AIYAR : I am glad I am in a position to explain Mr. Govinda Menon's difficulty. The question is whether a man can be punished if the marriage is not illegal. We are concerned with the civil rights of the parties in this bill. For this purpose it is enough if a marriage is void : no civil rights will ensue out of such a marriage.

As for punishing, it is entirely a matter governed by the Penal Code. I believe that the wording there is that if, under the law governing any particular community, the second marriage is void, the parties to that marriage shall be punished, so that it is enough if the Ezhava Bill provides for the second marriage being void, and then it will come under the Penal Code.

The illustration to the clause shows that, in cases where the second marriage is pronounced void, the parties shall fall within the clutches of the Penal Code. I do not think, therefore, that there is any serious difficulty in the matter.

MR. A. GOVINDA MENON : I withdraw the amendment.

The amendment was withdrawn by leave of the House.

DEPUTY PRESIDENT : The question is that clause 6, as amended by the Select Committee, stand part of the bill.

The motion was carried.

Clause 6 was added to the bill.

LIBRARY ARCHIVES Kerala Legislative Assembly

[Mr. K. P. Raman Pillai.]

Clause 7.

DEPUTY PRESIDENT: Mr. Hoogewerf, you have sent in an amendment to clause 7, which reads as follows:

Delete clause 7, and substitute the following:

"No marriage shall be dissolved, except on any of the following grounds:—

(1) that the marriage has been contracted through mistake of identity of parties, provided the marriage has not been consummated; and

(2) that consummation of marriage is impossible owing to the physical deformities of either of the parties thereto."

I rule this amendment out of order; for, it is not an amendment, but a negation of the original clause settled by the Select Committee. The proper procedure for Mr. Hoogewerf would be to oppose the Council accepting clause 7; and if the Council does not accept it, Mr. Hoogewerf can move his amendment as an independent proposition. If every member sets almost re-drafting the sections as settled by the Select Committee in a manner suitable to his tastes and temperaments, they are no longer amendments but distinct clauses and the proper procedure to deal with them would be for the member to object to the clause standing part of the Bill. If the Council negatives the clause as settled by the Select Committee, then the member interested may move that as a distinct proposition; otherwise he has no *locus standi*.

MR. P. K. NARAYANA PILLAI: Suppose any clause is not clearly expressed in the Bill; then cannot a member move an amendment?

DEPUTY PRESIDENT: He can, if he can persuade the Council. We should not indulge in the luxury of drafting and re-drafting, each of us according to his own views.

MR. M. R. MADHAVA VARIAR: Have we not got a right to do it?

DEPUTY PRESIDENT: No, you have not. As a point of order, I stated that for the information of the House. I will read out a portion from May's "Parliamentary Practice"

"An amendment may not be proposed to leave out and to bring up a new clause at the proper time".

That does not affect the privilege of the Council to delete particular sub-sections. But when you propose to delete a whole clause and put in a new clause, then it is not in the nature of an amendment.

MR. A. HOOGEWERF: Then I would move one portion of my amendment alone without deleting the whole clause.

DEPUTY PRESIDENT: Yes, you may ask for permission to move the amendment to the clause as drafted by the Select Committee. If it is something by way of substitution, I cannot allow.

MR. K. P. RAMAN PILLAI: I move that, in line 1, clause 7, the word "is" be substituted for the words "may be."

LIBRARY ARCHIVES Kerala Legislative Assembly

Sub-sections (ii) and (iii) of that clause show that dissolution is a voluntary act effected either by mutual consent or by a formal order of dissolution, unless, of course, they come under the provisions of the Penal Code. Death being an involuntary act, I think, it will be better to substitute "marriage *is* dissolved" for "marriage may be dissolved."

MR. N. KUMARAN: I second it.

MR. V. SUBBA AIYAR: I do not object to the amendment.

DEPUTY PRESIDENT: The question is that, in clause 7, line, 1 "is" be substituted for " may be."

The motion was carried.

MR. P. PARAMESVARAN: വിവാഹമോചനത്തിനുള്ള മാറ്റങ്ങളുടെ കൂട്ടത്തിൽ താഴെ എഴുതിയിരിക്കുന്നതു കൂടെ ചേർക്കണം.

"ഇരുകക്ഷികളുംകൂടി രേഖാമൂലം സമ്മതിച്ചു നിശ്ചയിക്കുന്ന ഒരു പഞ്ചായത്തിന്റെ അനുസരിച്ചു, അല്ലെങ്കിൽ" *

ഒരു വിവാഹം നടന്നിട്ടുണ്ടോ എന്നുള്ളതിലേക്ക് ഒരു സർക്കാർ രേഖ ഉണ്ടാക്കുന്നതിനായി കക്ഷികൾ സബ് രജിസ്റ്റർകച്ചേരിയിൽ ഹാജരാകണമെന്നു നിർബന്ധിച്ചുകൂടായെന്നും വിവാഹത്തെ സബ് രജിസ്റ്റർകച്ചേരികളിൽ രജിസ്റ്റർചെയ്യുന്നതു് അനാശാസ്യമാണെന്നും, സമുദായത്തിനു് അഭിപ്രായമുള്ളതായി ലാകമ്മിറ്റിറിയുടെ റിപ്പോർട്ടിൽ പറഞ്ഞിരിക്കുന്നു. രജിസ്റ്റർകച്ചേരിയിൽചെല്ലുന്നതിലും കോട്ടുവ്യവഹാരത്തിനു പോകുന്നതിലും വലിയ കഷ്ടനഷ്ടങ്ങളും അഭിമാനക്ഷയവും ഉണ്ടെന്നുള്ളതിനു സംശയമില്ല. വിവാഹം എന്ന കാര്യത്തിനുപോലും രജിസ്റ്റർകച്ചേരിയിൽ പോകുന്നതു മാനക്ഷയമായിരിക്കെ, വിവാഹമോചനത്തിനായി രജിസ്റ്റർകച്ചേരിയിൽ ചെല്ലേണ്ടിവരുന്നതു് ഇതിലും വലിയകഷ്ടമല്ലയോ?

ഞങ്ങളുടെ ഇടയിൽ വിവാഹമോചനം മുൻപിനാലെ നടപ്പുണ്ടു്. ഞങ്ങളുടെ ആചാരം ഇപ്രകാരമാകുന്നു. ഒരു ഊരിലുള്ള പ്രധാനപ്പെട്ട ആളുകളെ വിളിച്ചുവരുത്തി ഇരുകക്ഷികളുടേയും സമ്മതം മനസ്സിലാക്കി ചില സംഗതികളിൽ വിട്ടുമുറി എഴുതിയും, ചില സംഗതികളിൽ വിട്ടുമുറി എഴുതാതെയും വിവാഹബന്ധം പിരിക്കാറുണ്ടു്. ഇങ്ങനെ ചെയ്യുന്നതുനിമിത്തം അവർക്കു മേലാൽ യാതൊരുവിധമായ കഷ്ടനഷ്ടങ്ങളും ഇല്ലാതാകുന്നു. ചിലവിനു കൊടുക്കേണ്ടതായിരുന്നാൽ അതും അക്കാലത്തുതന്നെ തീർച്ചപ്പെടുത്തുന്നു. ഈ നടപ്പിനെ നിയമപ്രകാരം സാധുവാക്കുന്നതാണ് ഉചിതം. അതുകൊണ്ടു വിവാഹമോചനത്തിനു് ബില്ലിൽ പറഞ്ഞിരിക്കുന്ന മൂന്നുമാറ്റങ്ങൾക്കുപുറമെ ഞങ്ങളുടെ നടപ്പിൻപ്രകാരമുള്ള മേലെഴുതിയ മാറ്റത്തെക്കൂടി ചേർക്കണമെന്നു ഞാൻ അഭിപ്രായപ്പെടുന്നു.

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* Insert the following as sub-clause (ii), re-numbering the existing sub-clause (iii) as sub-clause (iv):

"by the award of a *panchayat* appointed with the written consent of both the parties; or"

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[Mr. J. John Nidiry.]

MR. K. C. RAJARAJA VARMA: I second the amendment. Mr. Paramesvaran says that it is the custom now followed by the community for marriages being dissolved by Panchayats. I think that custom should be recognised by the Council also.

MR. T. K. VELU PILLAI: I rise to oppose the amendment. If we accept the amendment, it will be putting the parties to much difficulty. The parties will have to see whether the Panchayats have been properly constituted and their consent freely given. It would not serve the ends of justice or convenience. I am strongly of opinion that the three methods detailed in the section are adequate and that the acceptance of the amendment would be to the detriment of the community.

RAO BAHADUR K. V. RANGASWAMI AIYANGAR: May I know whether Mr. Paramesvaran's amendment is not covered by sub-clause 2 of the section?

DEPUTY PRESIDENT: No. "By mutual consent evidenced by a registered document" means that parties have been actually separated by mutual consent. That is substantially different from their agreeing to abide by the award of a Panchayat.

MR. V. SUBBA AIYAR: The point had been considered by the Ezhava Law Committee and they say:

"Some of the decided cases on divorce, above referred to, make reference to meetings of caste men or caste assemblies for effecting divorce. It appears to us that to vest the power in them will lead to confusion incidental to the uncertainty of proof of their decision and to unnecessary litigation."

It is that that prevented the committee from adopting such a provision. Further, no legislation is necessary for the courts accepting the award of Panchayats. Even without a provision it is open to the parties to say that the dispute as to the question of the continuance of marriage may be referred to a Panchayat. The court is bound to abide by the decision of the Panchayat under section 502, C. P. C., so that even without this amendment the parties can have the benefits of the decision of Panchayats. Again, if the amendment is carried, the question of compensation will not be gone into by the Panchayat. If the provision is introduced, it may lead, as Mr. T. K. Velu Pillai suggested, to any number of complications as to the binding nature of Panchayats and their award. I, therefore, object to the amendment now proposed.

MR. N. KUMARAN: Sir, I beg to say a word. The object of the appointment of these Panchayats is not clear. It is quite vague as to whether the Panchayats are to be constituted for the purpose of making the marriage cease or for ascertaining the compensation that has to be given by one or other of the parties. All that the amendment says is that the marriage is dissolved by the award of a Panchayat which is not at all clear. I, therefore, oppose the amendment.

MR. J. JOHN NIDIRY: Before putting the question, may I ask for the opinion of the special member?

LIBRARY ARCHIVES Kerala Legislative Assembly

DEPUTY PRESIDENT : If he wanted to make any observation, he was quite at liberty to do so. I cannot call on him to speak.

MR. M. GOVINDAN : I have very little to say on the question before the House, but, as Mr. Nidiry wants me to speak, I shall do so. My opinion is that the amendment is not necessary. In a report submitted by me, it has been stated that such a provision would give rise to confusion and there will be difficulties to get reliable evidence with regard to the verdict of the Panchayat.

DEPUTY PRESIDENT : The question is that the following amendment be added as sub-clause (iii) to clause 7, renumbering the existing sub-clause as sub-clause (iv).

"By the award of a Panchayat appointed with the written consent of both the parties or ".

The amendment was lost.

MR. A. HOOGEWERF : I will alter my amendment and move for the deletion of sub-clauses (ii) and (iii) of clause 7.

Clauses 7 to 11 have to be considered together as they relate practically to the same subject; and my amendment in respect of them, *viz.*, those numbered (19) (25) (26) (30) (31) (33) in the notice paper have to stand or fall together. These clauses make divorce easy, the only restraint being the liability of the applicant to pay compensation. In my view, this is altogether objectionable. The Ezhava Law Committee's report shows that the sacredness of the conjugal tie is fully recognised by the community, and that divorces are very rare. If so, where is the necessity for making the marital union so easily dissoluble? Marriage is a sacrament, and the union, the foundation of society. If such facilities as are provided for dissolution exist, every little domestic quarrel which might loom very large at the time and which otherwise would be easily made up, may afford ground for rushing to a court of law and every new amorous infatuation may be seized by either party to the marriage for invoking the aid of the very easy and cheap procedure prescribed. I do not forget the provision of six months for repentance in clause 11. But once a false step is taken, it is only human nature to pursue it for consistency. The parties' consciousness of the certainty of the result may lead them to make other conjugal arrangements during the above period. Divorce has been the curse of western civilization and the cause of disruption of society, and the Catholic church has rightly set her face against it. "For better or for worse, for rich or poor, through good report or bad, till death shall not part" ought to be the solemn view of this sacramental union. The beautiful verses used in pronouncing the matrimonial blessing quoted by the Law Committee in their report show that the above view is quite in keeping with the ritual observed by the community. The orthodox view of Hindu marriage is even one step higher. According to that view, even death does not sever the tie. Custom as well as religion stands in the way of divorce. Education is making rapid strides among the women of the community who are unfortunately not represented here, and we cannot be too careful in making any legislative provision for which we cannot expect their countenance. And let us

LIBRARY ARCHIVES Kerala Legislative Assembly

[Mr. A. Govinda Menon.]

not forget that married people may have children, sometimes a large number. Just think of their fate when their father abandons them and takes a second wife in whom his affection becomes centred. For the well-being of society, I appeal to the members of this House to give this important matter their serious consideration.

I therefore move for the deletion of sub-clauses (ii) and (iii).

REV. FR. KURIAKOSE VETTIKKAPALLI: I second it.

MR. V. SUBBA AIYAR: Sir, what Mr. Hoogewerf wants is that there should not be any divorce except on the death of either of the parties to the marriage. It is no doubt a very good ideal in itself. But we have to make a law not for parties who are inclined to take the view of Mr. Hoogewerf, but for a particular community whose sentiments and requirements have been expressed by the evidence taken by the Ezhava Law Committee and provided for in their Bill. Though there has been very strong opposition to some of the provisions of the Bill, we have not heard till now from any member of the community that divorce under the two circumstances mentioned in sub-clauses (ii) and (iii), is objectionable. I, therefore, think it is unfair on our part to thrust our sentiments and views on a community that does not want it. We should rather respect the sentiments of the community than those of Mr. Hoogewerf. (*Laughter.*) I oppose his motion.

MR. A. HOOGEWERF: I had not the faintest idea of scoring a victory. My only object in moving this amendment was to place before the country and this Council the sacredness and the indissolubility of the marriage tie. I do not press the amendment.

The amendment was withdrawn.

Clause 7 as amended was put to the vote and allowed to stand part of the bill.

Clause 8.

DEPUTY PRESIDENT: Mr. Hoogewerf, here again you have got an amendment. I rule it out of order for the same reasons that I have stated before.

Mr. Govinda Menon, you may move your amendment.

MR. A. GOVINDA MENON: I move that, in line 4, clause 8, between the words "works for gain" and "and the petitioner shall" the following be inserted:

"Or if the respondent resides, carries on business or works for gain in any place outside Travancore, in the court of the District Munsiff within whose jurisdiction the petitioner resides."

This amendment is intended to get rid of a practical difficulty. The same difficulty has not arisen in other Regulations, especially the Nair Regulation. The remedy that I have suggested is so very patent that I think I need not say anything in explanation. I simply move the amendment.

LIBRARY ARCHIVES Kerala Legislative Assembly

MR. T. K. VELU PILLAI: I am very happy to second Mr. Govinda Menon's amendment.

MR. V. SUBBA AIYAR: I will accept the amendment as the difficulty is real. One of the parties to a marriage may be one who is not domiciled in Travancore. It will then be difficult for the petitioner to launch a suit anywhere outside Travancore. And therefore we may provide for such a contingency. I would suggest the following amendment, which closely follows Mr. Govinda Menon's draft:

"8. A husband or wife may present a petition for dissolution of marriage under Section 7, clause (iii), in the Court of District Munsiff within the local limits of whose jurisdiction

(1) the respondent resides, carries on business, or personally works for gain; or

(2) the petitioner resides, if the respondent resides, carries on business, or personally works for gain, outside Travancore;"

and the petitioner shall, in all cases, offer, in the petition, reasonable compensation to the respondent, except where such respondent renounces Hinduism.

DEPUTY PRESIDENT: Is it not more complex than Mr. Govinda Menon's amendment?

MR. V. SUBBA AIYAR: No. For I have not adopted any different wording or procedure. It closely follows his draft.

MR. P. K. NARAYANA PILLAI: May I know, sir, either from Mr. Govinda Menon or Mr. Subba Aiyar, whether in this particular clause, this Council is enacting anything for the purpose of a petition for divorce being entertained in British Indian or Cochin Courts?

DEPUTY PRESIDENT: It speaks of a particular court. It is only for helping the petitioners domiciled in Travancore.

MR. P. K. NARAYANA PILLAI: The dissolution of marriage, contemplated in this particular clause, comprises members of the Ezhava community domiciled and living in Travancore as well as those living outside Travancore irrespective of the question of domicile. See clause 1 of the Bill. We are providing a machinery for the dissolution of marriage. The petitioner may be or may not be within Travancore. The respondent also may be or may not be in Travancore. Is this particular clause meant to cover all cases of dissolution of marriage including cases of such heterogenous residence and domicile?

DEPUTY PRESIDENT: Dissolution of marriage sanctioned by the District Munsiffs' Courts situated in Travancore.

MR. V. SUBBA AIYAR: There is not the slightest doubt that we have no power to legislate for places outside Travancore.

MR. P. K. NARAYANA PILLAI: We have contemplated cases of non-domicile. I think, therefore, it is better that we say that we legislate only for Travancore courts.

DEPUTY PRESIDENT: Under the operation of the General Clauses Regulation, we can confer power only upon courts inside Travancore.

MR. P. K. NARAYANA PILLAI: My doubt is whether the provision in the clause does not go further.

LIBRARY ARCHIVES Kerala Legislative Assembly

[Mr. V. Subba Aiyar.]

DEPUTY PRESIDENT: You may take it that the Travancore Courts can try only cases in Travancore.

MR. P. K. NARAYANA PILLAI: Then let it clearly appear in the clause that we recognise our limitations.

DEPUTY PRESIDENT: If you want to make any alteration in the amendment, you may do so. We are making the provision on the assumption that the petitioner is residing in Travancore at the time of the presentation of the petition.

MR. P. K. NARAYANA PILLAI: Is it not a piece of international law that is attempted to be codified here? This Regulation is providing a machinery for divorce in the case of a non-resident foreigner among others, and the question arises whether this Council is justified in enacting a law which may have to be applied by a foreign court. It includes practically a provision which is more or less of an extra-territorial nature, because one of the parties to the proceedings may be a foreigner.

MR. A. GOVINDA MENON: It need not necessarily be so. He may be a Travancorean living in or outside Travancore.

MR. P. K. NARAYANA PILLAI: The amendment proposes to proceed against a person who is outside Travancore. It may be that he is a Travancorean or it may be that he is not a Travancorean. The question is whether we may encroach upon the sphere of private international law or legislate so as to affect existing foreign law.

MR. N. KUMARAN: Are we not filing any number of suits in Travancore against subjects in British India?

MR. P. K. NARAYANA PILLAI: We do. But when the decrees are attempted to be enforced, we begin to realise that we were wise in our action.

DEPUTY PRESIDENT: Here nothing has to be executed outside Travancore except in so far as compensation is concerned.

MR. A. GOVINDA MENON: Suppose the person has got property in Travancore.

DEPUTY PRESIDENT: Then that is a difficulty which could be got over.

MR. P. K. NARAYANA PILLAI: I am not speaking in opposition to Mr. Govinda Menon. I am only offering some observations to show that the language employed is too wide for the practical application of the law. It should not appear that we forgot entirely to confine ourselves to the scope of our legislative authority.

MR. V. SUBBA AIYAR: Sir, I do not think that there is any difficulty in the matter as suggested by Mr. Narayana Pillai. What is proposed is that, if a person not residing in Travancore contracts marriage with one who is resident in Travancore and goes away to his native

LIBRARY ARCHIVES Kerala Legislative Assembly

place, the person here should have a remedy. As long as the marriage subsists, the person in Travancore cannot marry another. If a suit is filed in a court in Travancore and decreed, it may not be executed outside Travancore. For the Travancore decree may not, except under certain circumstances, bind a person not domiciled in Travancore. It is for the benefit of the person who resides in Travancore that the proposed amendment is intended. The amendment will, in the case of a non-domiciled person who goes away outside Travancore, enable the petitioner to present the petition in the Court of the District Munsiff within whose jurisdiction the petitioner resides. If the respondent is a domiciled Travancorean and resides outside Travancore, he is bound by the Travancore law and the decision of Travancore Courts. In such cases, summons will be served through that court. I think therefore there is no difficulty in accepting the amendment.

MR. N. RAMAKRISHNA PILLAI: May I know if private international law will not be applicable in cases where the respondent lives outside?

DEPUTY PRESIDENT: It does not arise here.

MR. T. K VELU PILLAI: I rise to a point of order. My friend is not entitled to ask a question because nobody is in possession of the House.

DEPUTY PRESIDENT: He only gives an expression of opinion.

MR. N. RAMAKRISHNA PILLAI: I believe that in cases where the parties marry under the Travancore law the marriage could be dissolved under the procedure of the same law. That is my view. I do not know whether the learned Law Member would agree with me. If he agrees with me, the amendment will not be found necessary.

DEPUTY PRESIDENT: The question is that Mr. Govinda Menon's amendment which runs as follows be accepted. In line 4, clause 8, between the words "works for gain" and "and the petitioner shall", insert the following:

"Or if the respondent resides, carries on business or works for gain in any place outside Travancore, in the court of the District Munsiff within whose jurisdiction the petitioner resides".

The motion was carried.

MR. N. RAMAKRISHNA PILLAI: My object in bringing in the next amendment is to ascertain which of the proposals will be more acceptable to the community. My amendment proposes to restrict the payment of compensation to cases where the petitioner is the husband.

DEPUTY PRESIDENT: Formally move it, please.

MR. N. RAMAKRISHNA PILLAI: I move that, in line 4, "and, when the petitioner is the husband, he shall, in all cases" be substituted for "and the petitioner shall in all cases."

MR. P. K. NARAYANA PILLAI: I second it.

MR. V. SUBBA AIYAR: I oppose it for this reason. In the Nair Regulation, there is, no doubt, the provision that a husband alone

LIBRARY ARCHIVES Kerala Legislative Assembly

[Mr. P. K. Narayana Pillai.]

need pay compensation, and not the wife; but the Ezhava Law Committee went into that question and found that that restriction was not desirable, and the reason is this. Although the Marumakkatayam Law Committee recommended that both the husband and the wife should pay compensation, the Government in their proceedings relieved the wife from payment of any compensation on the ground that the husband would ordinarily be the petitioner. When statistics were taken for 5 or 6 years, it was found that, in 94 per cent. of divorce applications, the wives were the petitioners and not the husbands. Although I had accepted my friend's suggestion, *viz.*, that the wife should be presumed to be innocent, I have observed that Government were wrong in their view that the husband would ordinarily be the petitioner. And therefore it was thought that both the husband and the wife should pay compensation.

MR. K. P. RAMAN PILLAI: I do not think an analogy taken from the Nair Regulation and statistics ought to be applied in this case, because, in the Nair Regulation, the Nair women stand on a footing entirely different from that of the Ezhava women in this Regulation. In the Nair Regulation, polygamy is allowed and polyandry is prohibited, so that the Nair male is free to have as many wives as he pleases, thereby making it absolutely necessary for the wife to seek dissolution instead of the husband, since the husband can satisfy himself with a change but the wife cannot, except by having recourse to a court of law. That must account for the number of women who have sought the protection of the court in getting the marriage dissolved. Therefore, I think that that analogy ought not to be applied in this case. Although polyandry and polygamy are prohibited, I dare say, the number of petitions from the wives is not likely to be more than that from the husbands. I, therefore, support Mr. N. Ramakrishna Pillai.

MR. A. GOVINDA MENON: At the risk of being charged unchivalrous, I say that, in these days, when the "weaker vessels," as they are called by the men, are pleading for equality with the stronger sex, and in view of the provisions of this Regulation restricting the marriage of both men and women, I do not think there is any necessity to give any indulgence to the other sex, i. e., the female portion of the Ezhava community. Both sexes should be treated on the same level.

MR. P. K. NARAYANA PILLAI: May I explain the position that we have taken up?

DEPUTY PRESIDENT: I think you seconded the amendment.

MR. P. K. NARAYANA PILLAI: I did not give my reasons.

DEPUTY PRESIDENT: That is not my fault.

MR. P. K. NARAYANA PILLAI: Mr. Hoogewerf was permitted to speak after seconding.

LIBRARY ARCHIVES Kerala Legislative Assembly

I am not going to make a speech. I will just indicate the position we have taken up. Generally, it is the incompatibility of temper between the husband and the wife that induces one party to rush to the court for dissolution. Just suppose the instance of an Ezhava husband whose conduct is calculated to induce the wife to get rid of his tyrannical connection and to make her rush to a court of law for dissolution. Is it justifiable, I raise the question for the consideration of the House, that the husband should be the better off for ill-treating the wife? In the case of marriages of this description, the party that generally suffers is the woman. The result of such marriages is that, while the youth of the woman lapses prematurely, the man continues to have a good time of it, feeling as cheerful as ever. The woman is at a disadvantage in that she cannot be restored to the *status quo ante*. I would submit, not from the point of view of chivalry, as Mr. Govinda Menon put it, but from the point of view of equity, that it is not righteous to make a payment to a tyrant that he may release his hold on a woman seeking deliverance from him. That, I submit, would be very hard.

DEPUTY PRESIDENT: But courts are not empowered to examine the merits of each application. We must take into account human nature.

MR. P. K. NARAYANA PILLAI: The merits are not examined. We are taking into account human nature surely. We are not investing the courts with any discretion; otherwise, the distinction could have been drawn. The Select Committee also did not want the courts to go into the merits of individual cases, nor does this Council want to do so. I appreciate the position. But do we not encourage contingencies in which the wrong-doer may be benefited? In view of this particular aspect of the question, I thought I would support the motion of Mr. Ramakrishna Pillai; and not because the provision in the Nair Regulation is so and so, or because the Government might have been swayed by any peculiar considerations. Such contingencies do occur, and may occur, knowing as we do human nature. Therefore, I am of opinion that it is very undesirable to allow the husband under colour of the law to penalise the wife.

DEPUTY PRESIDENT: The King can do no wrong, nor can the woman!

MR. M. GOVINDAN: The chivalrous consideration appears to have influenced the Law Committee also. The Law Committee makes a difference between the husband and the wife. The husband has to pay Rs. 2,000, while the wife has to pay only Rs. 500. That is pure chivalry in the case of the Ezhava woman who is often an earning member of the family. Speaking of extreme cases of hardship, I can think of so many extreme cases in respect of man as well as in woman. Yesterday Mr. Subba Aiyar gave you a very hard case, of a woman running away with a paramour and effecting a divorce. If you take extreme cases there is no end to the discussion. I therefore oppose the amendment.

LIBRARY ARCHIVES Kerala Legislative Assembly

[Rao Bahadur K. V. Rangaswami Aiyangar.]

MR. T. K. VELU PILLAI: I wish to say a word on the amendment. Formerly, as my friend put it, any man could take any number of wives, whereas the woman was, at least by social custom, not permitted to have more than one husband. By this Bill we are conferring a great privilege upon the woman. Hereafter the husband is not able to take any other woman as wife except one, which means that he is to lose a time-honoured privilege. The temper of the husband has been alluded to. Temper, Sir, is not a masculine monopoly. It is not always confined to the husband. (*Laughter*). We have heard of masterful women whose temper was very much worse than that of their husbands. All of us are familiar with what Socrates said that after a tempest there must be rain (*Laughter.*) This was with reference to his wife's temper. In consideration of the circumstance that a valuable right may not be given by law to the wife alone, and in consideration also of the fact that the desire to cast away the husband may sometimes proceed from the wife in cases where the wife is very rich or very beautiful or very masterful (*laughter*), I think it is better that we place certain restictions on her power to cast away the husband. The committee that sat on this Bill have taken this aspect of the question into consideration. While they say that Rs. 2,000 might be paid by the husband, only Rs. 500 should be paid by the wife. Divorces, Sir, should be as few as possible. (*Mr. A. Hoogewerf: "Hear, hear."*) Society has got an interest in divorce being effected only when it is indispensable. This penalising is therefore very necessary for the safety of society and the happiness of homes. I oppose the amendment.

RAO BAHADUR K. V. RANGASWAMI AIYANGAR: I had not intended to say anything on this question; but after hearing Mr. P. K. Narayana Pillai, I have reconsidered my resolve. (*A voice*: "Louder, please."). I can only speak as loud as I can.

DEPUTY PRESIDENT: They are naturally anxious to hear everything that proceeds from you.

RAO BAHADUR K. V. RANGASWAMI AIYANGAR: My voice is not supposed to be a low one. I know it is loud enough to be heard even in larger assemblies than this.

I merely want to say that, to this question, we have to bring such knowledge as we possess of general human nature and of the manner in which men and women are apt to behave when they seek relief from conjugal ties. Mr. Subba Aiyar, I am afraid, practically gave away the show when he came up and suggested that the compensation that the woman has to pay would diminish the number of divorces. If the object of the Regulation is to minimise divorce, and to tie people together, whether they are able to get along or are not able to get along, if that is the notion at the back of the mind of those who support it, I think consistency requires that they should bring themselves to the side of those who oppose divorce outright. I cannot think that it is really right that, in the case of a community which has been accustomed to divorce and has

LIBRARY ARCHIVES Kerala Legislative Assembly

asked for divorce when sufficient reasons exist, we should try to put obstacles in the way of divorce being granted. Nor can I think it is a valid argument to say that they should be deprived of their right to have divorces effected, when there are sufficient reasons to grant them.

Another matter that I want to be considered is this. It is admitted by Mr. Govindan, and by Mr. Velu Pillai also, that the committee itself was animated by chivalrous notions and by the relative position of men and women. I am willing to attribute to the committee not only chivalry but a consideration of the equity of the arrangement proposed. The committee has made a distinction between men and women, by fixing heavier compensation to be paid by man, and by fixing it for the woman at about one-fourth of that of a man. I take it that the committee has admitted that there is a real reason for differential treatment in the two cases. I do not want to bring here the analogy of the Nair Regulation, except to illustrate the general principle. This general principle has already been explained by Mr. P. K. Narayana Pillai on the other side. I do not think that, except in very advanced societies, you get society women who go in for divorce for the sake of notoriety. Ordinarily, the woman is less anxious to secure relief from domestic tyranny than the man. When you raise the question of temper, as if it was the disability of the other sex alone, and that in an assembly like this, where women apparently now come only as visitors and not as members, it is very easy to say that divorces are due to the temper of women. It is a very unfortunate example that Mr. T. K. Velu Pillai brought forward.

MR. T. K. VELU PILLAI: I may be allowed to make a correction. I have said there is temper on both sides.

RAO BAHADUR K. V. RANGASWAMI AIYANGAR: Quite so. Mr. T. K. Velu Pillai tried to strengthen his argument as usual by the inevitable appeal to history. Personally, I must confess to considerable sympathy for Socrates' unfortunate wife. Socrates had no other business than trying to correct and argue with everybody. If a husband neglects his business and leaves the burdens of the house to fall upon the wife, I think any woman, however patient she might be, is apt to lose her temper. Personally, therefore, I have, as I said, considerable sympathy for Socrates' poor wife. I do not object to an illustration from history but it is a wrong application of history to cite this example. A lady finds that her husband has not been earning anything, and that he neglects her and her children. She finds that she must be separated from him. Forcing her to seek public relief in a court of law is, I think, too hard. I do not ask for chivalry. I want only equitable treatment for both sexes and the consideration of each case on its merits.

MR. P. K. Narayana Pillai has contended that the position of men and women is not identical in this matter. I admit it. A man, of course, can marry at any age. The woman cannot do so. The woman is therefore not likely to seek separation except in very rare cases. Women very rarely rush to divorce courts and ask for setting aside their marriage ties, except for very sound and substantial reasons. It is only

LIBRARY ARCHIVES Kerala Legislative Assembly

[Mr. N. Ramakrishna Pillai.]

in very rare cases that we find a woman who wants to change her husband as she changes her apparel. We should not legislate for exceptional cases. As courts are not given the right to go into the merits of each case, I think it is all the more necessary that we should not make divorce harder than it is. I am afraid most of the arguments brought forward against this clause are arguments of that half-hearted nature put forward to evade the principle, such as the argument that 'the matter has already gone up before the Ezhava Committee,' and that 'the Ezhava Committee has decided in this manner.' We are not here to decide only according to the recommendations of the Ezhava Committee. We have to decide this question from our own knowledge of human nature, from our knowledge of the sexes. It seems to me that we are trying to make the burden of the woman exceedingly great. We are certainly not going to add either to the happiness of society or to the comforts of men and women of the community, by making divorce impossible. Personally, I think that, in all modern societies, some provision is rightly made for divorce, and that we ought to give also reasonable facilities for divorce, particularly because no woman will ordinarily seek divorce, as she would suffer from social opprobrium and a man does not suffer from divorce proceedings to the same extent as a woman. If any compensation, which would generally be money compensation, is to be asked of the woman who seeks divorce, it would be an additional burden on her. For these reasons, I gladly express my hearty sympathy for Mr. Ramakrishna Pillai's proposal.

MR. N. RAMAKRISHNA PILLAI: I never said that, because the Nair Regulation or the Vellala Bill adopted this provision, it should be inserted in the Ezhava Bill also. My idea was that the question should be decided on its own merits and it was with that object that I brought this amendment for the consideration of this Council. There might, no doubt, have been stray cases where the woman might have run away with a paramour. The whole section of the weaker sex should not be punished on that account.

MR. T. K. VELU PILLAI: I wish to know whether the woman generally admits that she is the weaker sex now-a-days.

MR. N. RAMAKRISHNA PILLAI: My friend had better ask the sex concerned. (*Laughter*).

It is mainly to check capricious repudiation that this proposal for the payment of compensation is made. Cases are certainly conceivable where the wife wants to desert the husband without just cause; but those cases are very rare. In the majority of instances the innocent party will invariably be the wife. If the woman is also compelled to pay compensation, cases may arise where she may be driven to an intolerable position and then have to pay for freeing herself. The law now seeks to enforce monogamy and at the same time prohibits enquiry into the causes of the proposed dissolution. The court is deprived of the power to determine the question who is the innocent party in such

LIBRARY ARCHIVES Kerala Legislative Assembly

cases. There is no harm in presuming that the woman is innocent. By compelling the wife to pay without giving her an opportunity to explain her reasons, temptation is given to the husband to compel *her* to go to a court for a separation. The disparity in the amount of compensation also makes it more profitable for an unscrupulous man to compel her to do so. I therefore propose this amendment for adoption. And may I not hope that it will be acceptable to the community?

DEPUTY PRESIDENT: Nobody can answer your question in this Council. Nobody knows anything about the views of the community on the point.

MR. N. RAMAKRISHNA PILLAI: Anyhow it is in the hope that this amendment may be discussed that I have brought it forward.

MR. V. SUBBA AIYAR: My friend, Mr. Ramakrishna Pillai, only put the question whether it is acceptable to the community. Of course, we can only gather from the evidence that is taken from the conduct of the community subsequent to the report of the committee, subsequent to the introduction of the Bill in the Legislative Council, and subsequent to the publication of the Select Committee's report on the Bill. I may say that there does not seem to be any petition from anybody belonging to the community objecting to the retention of this provision in the Bill. From that, we are led to infer that the community has absolutely no objection. It is not a case where no representation has been received about the Bill because there are very many representations in various matters dealt with by the Bill; we may therefore infer that the community does not want that the woman should be exempted. Mr. Govindan himself has accepted it, and I do not see any reason why a woman should be exempted from the nominal amount of Rs. 500.

The amendment was then put and lost.

DEPUTY PRESIDENT: We will pass on to the next amendment.

MR. K. P. RAMAN PILLAI: Sir, I demand a poll.

DEPUTY PRESIDENT: It is now too late.

MR. K. P. RAMAN PILLAI: I move that the expression "except where such respondent renounces Hinduism," be deleted, for the obvious reason, *viz.*, that of giving freedom of thought to members of this community. It has been stated in this House yesterday that there is a tendency among certain members of a large section of the community to embrace Buddhism, so that, if a husband or a wife accepts Buddhism, I think, as the law now stands, the marriage tie will be dissolved. Taking all these into consideration I think the expression ought to be deleted.

DEPUTY PRESIDENT: Apparently in such a case, no compensation need be paid. Does anybody second his amendment?

MR. J. JOHN NIDIRY: I second it.

MR. V. SUBBA AIYAR: Evidently Mr. Raman Pillai is under a misapprehension hat it is now proposed that marriage is dissolved by conversion; but when one party renounces his religion, it makes it impossible for the other party to live with him.

LIBRARY ARCHIVES Kerala Legislative Assembly

[Rao Bahadur K. V. Rangaswami Aiyangar.]

MR. J. JOHN NIDIRY: Suppose it is with the consent of the other party.

DEPUTY PRESIDENT: If it is with the consent, divorce would not arise.

MR. V. SUBBA AIYAR: Anyhow, in such cases the petitioner should not be compelled to pay compensation to the respondent. Mr. Raman Pillai said that every body should have the liberty to follow any religion he likes. I do not think the clause contemplates any restriction upon the liberty of the individual in matters of religion. He is at liberty to follow any religion that he likes; only, he should not compel the other party to do it or to pay for his freedom of conscience.

MR. P. K. NARAYANA PILLAI: Is there any indication of the wishes of the community in this question?

MR. V. SUBBA AIYAR: The committee has submitted its report after taking evidence. The Bill is there and there is nothing more.

DEPUTY PRESIDENT: Before I put this amendment to the vote there is another amendment to be moved by the Rev. Fr. Vettikkapalli

REV. FR. KURIAKOSE VETTIKKAPALLI: My amendment is to delete "except where such respondent renounces Hinduism" or substitute for "Hinduism," "the religion of the petitioner without his or her consent."

MR. S. PARAMESVARA AIYAR: I rise to a point of order. I wish to know whether alternative amendments could be proposed.

DEPUTY PRESIDENT: For the present, let him restrict himself to the portion of the amendment supporting Mr. Raman Pillai.

REV. FR. KURIAKOSE VETTIKKAPALLI: Then I move that "except where such respondent renounces Hinduism," in clause 8, be deleted.

Even in the case of adultery and murder, compensation is allowed, but when one renounces Hinduism compensation is not allowed, so that it is considered to be the greatest of crimes which does not even deserve compensation. Certainly this is against liberty of conscience. I move this amendment to safeguard liberty of conscience which is considered to be the greatest liberty of man. Therefore I propose that "where such respondent renounces Hinduism" be deleted.

RAO BAHADUR K. V. RANGASWAMI AIYANGAR: I wish to support this amendment not only on the ground of liberty of conscience, but because, I think, it is very difficult to understand what is implied by "renouncing Hinduism". I take it that what is implied in this clause is that a person not only renounces Hinduism, but becomes a convert to some other religion. A person who renounces Hinduism need not necessarily become a convert to some other religion. He need not show it by any manifest act. What is it that constitutes a "renunciation" of Hinduism? I am entitled to ask this as I should like to vote upon

LIBRARY ARCHIVES Kerala Legislative Assembly

the resolution, and to request the learned leader of the House to explain to me what he understands by "renunciation of Hinduism." I have for a long time been looking at Census Reports and similar books to discover the essentials of Hinduism. When I asked a little colleague a while back 'what is meant by renunciation of Hinduism,' he suggested that becoming a *Sanyasi* is renunciation of Hinduism. I think it was Lala Baijnath who said that any person who does not believe in the divine character of the Veda and the sanctity of the cow then and there ceases to be a Hindu. Mr. Raman Pillai took the example of a Hindu who becomes a Buddhist and so ceases to be a Hindu. I have one or two classical books on Buddhism, which declare the Buddha to have been a great *Hindu*! I think it is even now customary for Jains and Buddhists to be classed as Hindus. Brahminism and Buddhism are what one may even call sects of Hinduism in a classification. If this is so, surely there is no such thing as a renunciation of Hinduism, when it is a question of going from one sub-group of Hinduism to a minor sub-grouping of Hinduism. It is one of those points on which there is still considerable difference of opinion. It seems to me, therefore, that if this Legislature passes an enactment of the important nature proposed, and as put in language, which is not precise enough, for discussion, which can cover cases not contemplated by the law, and which would leave each case to be fought out in courts of law subsequently, I think the Legislature will be doing a positive disservice by increasing litigation by its own carelessness. Apart from the very important question of the violation of liberty of conscience, this legislation will penalise people who desire to change their religion, as it would make them not only undergo various social penalties incidental to giving up their religion but also make them pay certain monetary penalty. A person can now give up Hinduism and need not take up any other religion. In that case, where does that person stand? Suppose I say that I do not believe in the Vedas, that I do not believe in *any* religion, and that I have renounced Hinduism. Suppose I write to every newspaper and state on every platform that I have renounced Hinduism, and that, at the same time, I have not become the follower of any other religion. Do I then come under this clause? Do these statements constitute specific acts tantamount to *renouncing* Hinduism? Such looseness of expression is perhaps allowable in public debates, but in the Statute Book we want a more precise form of words.

MR. T. K. VELU PILLAI: Sir,—

DEPUTY PRESIDENT: We might now adjourn for lunch.

The Council adjourned for lunch at 2-15 P. M. to meet again at 3 P. M.

The Council re-assembled at 3-5 P. M. after lunch.

DEPUTY PRESIDENT: Mr. Subba Aiyar.

MR. T. K. VELU PILLAI: I was just going to speak before adjourning for lunch and I was permitted to speak. Mr. Rangaswami

LIBRARY ARCHIVES Kerala Legislative Assembly

[Rao Bahadur K. V. Rangaswami Aiyangar.]

Aiyangar said that it was not at all advisable to retain the words 'renouncing Hinduism'.

DEPUTY PRESIDENT: Did you speak on that motion before?

MR. T. K. VELU PILLAI: No.

Mr. Rangaswami Aiyangar referred to authorities to show that the distinguishing mark of Hinduism was respect for the Vedas and respect for the sanctity of the cow. I also accept that interpretation. But in practical parlance everybody understands what the word Hindu means. Hinduism is a word signifying a religion as well as a caste, and the caste system is one of the incidents of Hinduism. A Hindu, a high-caste Hindu, when he accepts the Christian or Mahomedan religion, ceases to be a Hindu. The word "Hindu" is used in Government publications like the Census Report and also in statutes. I would refer, for instance, to the Wills Regulation. Section 4 of that Regulation says:—

"A Hindu co-parcener shall be entitled to dispose of by will his undivided interest in the joint property which interest would otherwise devolve upon his co-parceners by right of survivorship."

Section 6 says:

"No bequest made by a *Marumakkathayam* Hindu having near relations shall take effect as against such relations."

There are so many sections like this. I do not want to refer to all the statutes to establish my position. According to one sense, Hinduism means Vedantism. In another sense, it means the caste system. But every member of this Council understands what Hinduism means. I have also to observe that the vedic meaning of the term is not accepted in ordinary life to-day, for, in the Vedas, there is no reference to the caste system. Yet, it is well known that for thousands of years the Hindu society was governed by the caste system. Sometimes people lose some of the privileges of being Hindus. For instance, if a man goes to England and lives there for some time, according to the orthodox school, that man cannot enter a Hindu temple. For the purpose of religious worship inside a temple, the man loses his caste. That is because, when he goes to England and lives there, he is supposed to have partaken of food prepared by a non-Hindu. But it will be idle to say that an England-returned person ceases to be a Hindu. I do not want to take much of the time of the Council. I only want to say that the word Hinduism is a sufficiently well-understood word which has been used in Government publications and is being used in ordinary language and accepted in very many statutes. I have got very high respect for the learned gentleman on the other side.

RAO BAHADUR K. V. RANGASWAMI AIYANGAR: I want to ask a question. Mr. T. K. Velu Pillai has been referring to statutes for the word Hindu. My references are all to Hinduism and not to Hindu. Is there any reference to Hinduism there?

LIBRARY ARCHIVES Kerala Legislative Assembly

MR. T. K. VELU PILLAI: I must tell Mr. Rangaswami Aiyangar that a Hindu means one who accepts Hinduism as his religion, a follower of Hinduism. I think that is a very plain interpretation.

There is also a technical difficulty. Mr. Rangaswami Aiyangar was too late when he raised this objection, because, in clause 2, at the suggestion of Mr. K. Paramesvaran Pillai, the words, "renounced Hinduism" were accepted. This Council did understand the full meaning of the word then, and it is too late to advance arguments with reference to that wording at this stage.

RAO BAHADUR K. V. RANGASWAMI AIYANGAR: I objected to the entire section.

DEPUTY PRESIDENT: You were outvoted.

MR. T. K. VELU PILLAI: As I said, this Council understood it then, and, I am sure, it will understand it now, so that, there is absolutely no difficulty. Mr. Rangaswami Aiyangar based his amendment mainly on this supposed difficulty. We have been administering and helping the administration of laws for so many years. No court has found it difficult to interpret the word "Hinduism". If ever there is any difficulty in future, our courts which have all these *Srutis* and *Smritis* and all the other books in their library would be able to explain the word Hinduism. The objection is therefore unsustainable. The meaning of the word especially in this particular section is very clear and its retention is absolutely necessary in the interests of the community concerned.

MR. P. K. NARAYANA PILLAI: Sir, the objection raised by Professor Rangaswami Aiyangar is entitled to some consideration; for, referring to the publication by Sir Herbert Risley on "The peoples of India" at pages 232 and 233, I see that there has been considerable difficulty in defining what exactly is meant by the word "Hindu" or "Hinduism." The phrase "renouncing Hinduism", as my learned friend points out, tends to complicate the vagueness still further. Since it is the acceptance of another religion that is contemplated in the clause, some appropriate addition may be made to the clause to bring out the meaning clearly. No doubt the interpretation of the word Hinduism arises only incidentally, since the question before the House relates to whether we should retain or reject the provision regarding the renunciation of Hindusim. If it is retained, it is better that we make it specific. If, on the other hand, as the Rev. Fr. Vettikkappalli proposes, it is to be taken away, then we need not trouble ourselves with the definition of the word Hinduism at all. I would myself agree to the retention of the clause in the present form as I understand from the Law Member that the community has absolutely no objection to its retention. Whatever our individual views be, the wishes of the community concerned will have to be considered and respected. If, as a matter of fact, the community wants its retention for reasons which they need not explain, I certainly am prepared to support the Law Member and agree that it must be retained in the clause as it now stands. I oppose the motion for dropping the words in question.

LIBRARY ARCHIVES Kerala Legislative Assembly

[Mr. V. Subba Aiyar.]

MR. V. SUBBA AIYAR: Sir, the first question for consideration is whether a person who has renounced Hinduism—I will take the wording in the Bill—should be allowed to receive compensation in case of divorce. I have already explained that when there are two parties to a marriage professing the same religion, the one shall not be compelled to live with the other, when they cannot agree as to their religious belief. When it is not possible for them to live any longer together, it is rather unfair to ask them to do so and a divorce may be absolutely necessary. In such a case, the party at fault should not be entitled to receive compensation from the party not at fault. The Rev. Father suggested another argument; and that is, in case of adultery, you give compensation, but in case of embracing another religion you do not choose to do it, and therefore you try to treat it in a different way, although there are no reasons for it. I have to observe that the one requires a lot of enquiry and procedure which it is desirable in the interests of the community to avoid. The other does not admit of any controversy at all and probably will be an admitted fact on both sides. Hence it is, I believe, that originally the Marumakathayam Committee and subsequently the Nair Regulation contemplated that renunciation of Hinduism might be put in there. I do not think that the suggested analogy holds good. I am therefore for the retention of the clause.

The next question is whether we have sufficiently expressed ourselves in that particular matter. With reference to this, I may say that the expression finds a place in the Nair Regulation. It was the expression used by the Ezhava Law Committee, and when the Bill containing the very same expression was introduced in this Council, no objection was raised. There was also no objection at the time when the Select Committee considered the Bill. I do not mean to say for a moment that it is not open to any member to point out a difficulty, *if* there is a difficulty. What I say is that the expression used in the Nair Regulation was kept up by the Ezhava Law Committee and that no difficulty was pointed out. We are very much obliged to Mr. Rangaswami Aiyangar for pointing out the difficulty.

Then the question is: 'what does the expression mean?' It does not mean mere want of faith or loss of faith in Hinduism. It means more. I do not think it is intended to convey mere passive inaction. In other words, if a man of a higher caste does not believe in everything that is said in the *Sastras*, if a man does not perform the rites enjoined by the *Sastras*, we do not say that he has renounced Hinduism, but he must do an open act, that is, along with the loss of faith in Hinduism, he must openly declare his faith in another, or embrace another religion. If the wording should be embracing another religion, I am perfectly willing to grant it. The idea is that it must be an open renunciation of one religion and embracing another religion. In such cases, the party is not entitled to any compensation. I believe there has not been any difficulty in the interpret-

LIBRARY ARCHIVES Kerala Legislative Assembly

ation of the term till now. I do not think the question has arisen at all. If, however, it is capable of any different interpretation, I do not think there is any harm in making it plainer and adopting a more suitable expression. To my mind, the expression "and embracing another religion" is more suitable.

RAO BAHADUR K. V. RANGASWAMI AIYANGAR: Why should there be the expression "renouncing Hinduism" if there is to be "embracing another religion"?

MR. V. SUBBA AIYAR: So far as Mr. T. K. Velu Pillai is concerned, he says we are estopped from considering it to-day. But, if as a result of any changes that may be made with reference to later clauses any consequential amendment is found necessary, I think the Council will be willing to go back.

MR. T. K. VELU PILLAI: I say we are not able to understand it in full.

MR. V. SUBBA AIYAR: Then, we shall have to make it plainer by making the necessary consequential amendment. If a Brahmin does not perform *Pooja* or a rite required to be performed by him every day, it does not mean that he has renounced Hinduism. It must be some open specific act. Anyhow, I have no objection to make it plainer by the insertion of the expression "and embracing another religion." The two constitute a single act. I move that the words "and embracing another religion" be added after the word "Hinduism."

MR. T. K. VELU PILLAI: I would suggest the wording "renunciation of Hindu religion in favour of another."

DEPUTY PRESIDENT: The question before the House is whether the amendment moved by Mr. K. P. Raman Pillai should be accepted or not. Let us dispose of it first. Then, if the House agrees to retain the clause, we may move a further amendment to place it beyond all doubt in the light of the observations of Mr. Rangaswami Aiyangar.

The question before the House is that the expression "except where such respondent renounces Hinduism" in lines 5 and 6 of clause 8 be deleted.

The motion was put to the vote and lost.

MR. V. SUBBA AIYAR: In view of the fact that a difficultly has been pointed out, I think it is only desirable to make it plainer instead of waiting for the decision of a court. I, therefore, beg to move that after the word "renunciation of Hinduism," the words 'and embracing another religion" be added.

MR. M. GOVINDAN: I second the motion.

DEPUTY PRESIDENT: Does anybody oppose the motion? I find none.

LIBRARY ARCHIVES Kerala Legislative Assembly

[Mr. A. Hoogewerf.]

The question is that, after the word "Hinduism", the words 'and embracing another religion" be added.

The amendment was put to the vote and carried.

DEPUTY PRESIDENT: In the light of what has been said, do you press your other amendment?

REV. FR. KURIAKOSE VETTIKKAPALLI: I do not think it is necessary to move that amendment.

The following amendment was not moved and was therefore deemed to have been withdrawn.

REV. FR. KURIAKOSE VETTIKKAPALLI: Substitute for "Hinduism" "the religion of the petitioner without his or her consent."

MR. A. GOVINDA MENON: Sir, I beg to move that the following be added at the end of clause 8:

"or lives in adultery or, where the petitioner is the husband, refuses to live with him, or, where the petitioner is the wife, refuses to allow her to live with him."

I have proposed this amendment because the very same wording is found in another section, *i. e.*, section 12 of the bill. My argument is that if the same can find a place in another section which deals with the question of maintenance, I do not see why it should not be put in here. Either section 12 should be changed or this clause should be added here. I am not particular in having my present proposal accepted.

DEPUTY PRESIDENT: At this stage, you must take up a definite position.

MR. A. GOVINDA MENON: I move it.

The amendment fell through for want of seconding.

DEPUTY PRESIDENT: Then comes Mr. Hoogewerf's amendment.

MR. A. HOOGEWERF: This is closely connected with my previous amendment. I am not pressing it.

The following amendment was not moved and was therefore deemed to have been withdrawn.

MR. A. HOOGEWERF: Delete clause 8, and substitute the following:—

"A husband or wife may present a petition for dissolution of marriage in cases falling within the exceptions mentioned in section 7 in the court of the District Munsiff within the local limits of whose jurisdiction the respondent resides, carries on business, or personally works for gain.

A copy of such petition shall be served on the respondent, at the expense of the petitioner, in the manner provided for the service of summons on a defendant in the Code of Civil Procedure, and the petition shall be disposed of as a plaint in a regular suit.

The order on the petition shall be appealable."

LIBRARY ARCHIVES Kerala Legislative Assembly

DEPUTY PRESIDENT: The question is that clause 8, as amended by the Council, stand part of the bill.

The motion was put to the vote and carried.

The amended clause was added to the bill.

Clause 9.

MR. K. P. RAMAN PILLAI: Sir, I move that the expression "two thousand rupees where the petitioner is the husband, and" in clause 9 be deleted.

My object is very obvious. That is to say, the amount of compensation ought to be fixed with reference to the means and circumstances of the parties, the respondents. That is a matter which ought to be left entirely to the discretion of the Court which sits in judgment over those petitions. A provision of this kind would be practically holding out a premium to rich men to effect a divorce at their free will and pleasure. I do not see the equity of allowing a fabulously rich husband to get a divorce on payment of Rs. 2,000. After all, considering his status and his means, it may be a paltry sum. Such being the case, I think the discretion of the Court ought not to be fettered by the legislature and the judges should be given a free hand in deciding what ought to be the sum that the respondent ought to pay before he gets a decree. I, therefore, move this amendment.

MR. G. PARAMESVARAN PILLAI: Sir, I second it.

MR. P. K. NARAYANA PILLAI: I would second Mr. Raman Pillai, subject to one condition.

DEPUTY PRESIDENT: It has been seconded already.

MR. P. K. NARAYANA PILLAI: I am also supporting Mr. Raman Pillai, provided that he agitates against another clause, *viz.*, that petitions for the dissolution of marriage should be presented to the District Court. In view of the jurisdictional authority of the Munsiff and in view of the amendment now proposed by Mr. Raman Pillai, it may be necessary that the petition will have to be presented to the District Court. Provided that we are entitled to go back upon the previous provision and get it changed, I am prepared to support him.

DEPUTY PRESIDENT: If it is carried you may bring in an amendment.

MR. P. K. NARAYANA PILLAI: For the time being, I support Mr. Raman Pillai.

MR. V. SUBBA AIYAR: It is rather difficult to say anything for or against the amendment. While, on the one hand, we follow the existing Nair Regulation and also the tendency of the witnesses who have been examined by the Ezhava Law Committee,—

MR. K. P. RAMAN PILLAI: The witnesses were all males.

MR. M. GOVINDAN: Women were also examined.

LIBRARY ARCHIVES Kerala Legislative Assembly

[Mr. A. Hoogewerf.]

MR. G. PARAMESVARAN PILLAI: May I know whether they were specifically asked this question?

MR. M. GOVINDAN: I think we put this question.

MR. V. SUBBA AIYAR: While, on the one hand, they accepted it, I think that it only stands to reason that the men should not be allowed to fix their price for divorce, but it may be left to the discretion of the Court. The amount may be two lakhs or Rs. 50,000. It depends upon the status of the individual, as Mr. Raman Pillai put it. I shall not be justified in opposing that amendment seeing that the community itself wants it. I leave it to the House to decide it.

DEPUTY PRESIDENT: There may be children.

MR. V. SUBBA AIYAR: There may be some difficulty also. A rich man may wish to have a number of wives. He has only to pay a couple of thousand rupees. He must be made to feel that it is costlier than he supposes. He must be prepared to pay a higher price than he proposes to pay, of course, within his means. The whole question both in the case of men and women may be left to the discretion of the court, as I said. As for jurisdiction, that will depend upon how the amendment fares.

DEPUTY PRESIDENT: That question has not arisen.

MR. V. SUBBA AIYAR: The principle is all right and I do not seriously object to Mr. Raman Pillai's motion.

DEPUTY PRESIDENT: You neither support nor oppose. Is that your position?

MR. V. SUBBA AIYAR: Yes, I am willing to be guided by the decision of the Council.

MR. M. GOVINDAN: Mr. Raman Pillai's amendment omits the maximum prescribed in respect of men and retains the maximum in respect of women. I do not see the equity of it. If you are going to omit, you should omit both. If not, it is better to retain the provision as it is. Particularly the provision fixing Rs. 2,000 in the case of husbands is in the Nair Regulation also. For the sake of uniformity, I should like to retain it.

MR. A. HOOGEWERF: Mr. K. P. Raman Pillai would give unfettered discretion to the court. I do not feel that it is very necessary to give unfettered discretion to courts in this matter, because there will be no sort of basis, no standard or guide for the courts to proceed upon for determining the amount. It is very safe to fix a maximum in such cases, particularly where divorces are being obtained even without any payment now.

DEPUTY PRESIDENT: What is your position?

MR. A. HOOGEWERF: I oppose the amendment.

Is it only the max mum?

LIBRARY ARCHIVES Kerala Legislative Assembly

DEPUTY PRESIDENT: That is all.

The question is that in lines 4 and 5, the words "two thousand rupees where the petitioner is the husband, and" be deleted.

The amendment was put to the vote and lost.

The following amendments which were similar to the one disposed of were not moved and were therefore deemed to have been withdrawn:

MR. A. GOVINDA MENON: Lines 4 and 5. Delete the portion of the clause after the words "two thousand rupees".

MR. N. RAMAKRISHNA PILLAI: Lines 4 and 5. Delete the portion of the clause after the words "twe thousand rupees."

DEPUTY PRESIDENT: The question is that clause 9 stand part of the bill.

The motion was put to the vote and carried.

Clause 9 was added to the bill.

Clause 10.

The following amendment standing in the name of Mr. A. Hoogewerf was not moved and was therefore deemed to have been withdrawn.

MR. A. HOOGEWERF: Delete the whole clause.

DEPUTY PRESIDENT: The question is that clause 10 stand part of the bill.

The motion was put to the vote and carried.

MR. P. K. NARAYANA PILLAI: I oppose clause 10.

DEPUTY PRESIDENT: You are too late.

Clause 10 was added to the bill.

Clause 11

REV. FR. KURIAKOSE VETTIKKAPALLI: Sir, I move that the following be added as a sub-clause to clause 11:—

"Part II does not apply where the male and the female are both non-Hindus at the time".

My object in introducing the sub-clause is that that part of the Bill which speaks of marriage and dissolution should not apply to cases where the man and the woman are non-Hindus at the time. It is said at the beginning that the Regulation may be extended to Ezhava converts also. In that case, this portion may not apply to them, because they will have their own form of marriage.

DEPUTY PRESIDENT: I think Mr. Panjikaran moved an amendment to the effect that provisions of Part II should not be extended to converts and that it was accepted.

REV. FR. KURIAKOSE VETTIKKAPALLI: Then I do not move it.

DEPUTY PRESIDENT: You may judge the result yourself. I am merely giving you the information. Do you move the amendment?

LIBRARY ARCHIVES Kerala Legislative Assembly

[Mr. V. Subba Aiyar.]

REV. FR. KURIAKOSE VETTIKKAPALLI: If I understand from the Chair that it has been accepted by the House that that portion should not be applied to converts, I do not move my amendment.

DEPUTY PRESIDENT: This is what was passed. "Nothing herein contained shall be deemed to enable Government to extend to Ezhava converts the provisions of Part II."

REV. FR. KURIAKOSE VETTIKKAPALLI: I am satisfied with that. I do not press.

DEPUTY PRESIDENT: The question is—

MR. K. PARAMESVARAN PILLAI: Sir, before the question is put, I wish to know, with regard to clause 11 whether the provision in the clause that the declaration that the marriage is dissolved should be made only after determining the amount of compensation to be awarded has been deliberately made or it is a mistake. For, it appears to be, that there is no point in postponing the declaration, as there is no option left to the court in the matter and that the determination of the amount of compensation has nothing to do with the declaration that the marriage is dissolved. A lot of time may be taken in determining the amount of compensation and an appeal is provided against the award. Under these circumstances, the parties may be put to unnecessary inconvenience and trouble by postponing the order declaring the marriage dissolved.

DEPUTY PRESIDENT: Would you make any modification to make it clear?

MR. K. PARAMESVARAN PILLAI: With the permission of the Chair, I would move the following amendment:

"If the petition is not withdrawn, in the meantime, the court shall declare in writing the marriage dissolved and proceed to determine the amount of compensation to be awarded.

The dissolution shall take effect from the date of declaration.

The court shall then proceed to determine the amount of compensation to be paid to the respondent."

MR. N. RAMAKRISHNA PILLAI: I second it.

MR. V. SUBBA AIYAR: The period of six months is provided in the clause in order to give an opportunity to the petitioner to see whether he should proceed with the petition or not. As Mr. Hoogewerf pointed out earlier in the day, there may be cases where the parties fall out one particular moment and the very next moment one of the parties rushes to court praying for divorce; and when they cool down, it is natural that the petition may be withdrawn. So, six months' time is allowed for reconsideration. What Mr. Paramesvaran Pillai wants is that, the moment the six months' period expires, the marriage

LIBRARY ARCHIVES Kerala Legislative Assembly

should be dissolved. The difficulty there would be that you dissolve the marriage and the party aggrieved has to wait for compensation for a long time.

DEPUTY PRESIDENT: That is so in every case.

MR. V. SUBBA AIYAR: There will be practical difficulty also. One party will try to prolong the petition and the other party will be put to very great difficulty, the moment the marriage is dissolved. Let us take the case of a husband petitioner. The moment the marriage is dissolved, the woman is not entitled to get anything. Until she gets the compensation, she will be put to considerable difficulty in the matter of her living. The enquiry may take a good deal of time. The matter may go on appeal. It may take two or three years before the matter is finally disposed of. This aspect of the case must have struck the framers of the Nair Regulation when they said that both the matters should be disposed of together; and I believe it will be to the interests of the person who seeks dissolution to see that the question of compensation is settled once for all. I believe it will be conceded that, if the dissolution takes place on a particular date after the six months, the woman is entitled to maintenance till then. Taking the case of a woman in such cases, it is absolutely necessary that the question of dissolution should be decided only when the question of compensation is decided.

DEPUTY PRESIDENT: It will involve appeal.

MR. V. SUBBA AIYAR: I would have considered the question in detail if I had notice of the amendment. All the same, there are practical difficulties. If we adopt the suggestion of Mr. Paramesvaran Pillai, the party that seeks divorce gets all that he wants, and he is not interested in the question of compensation. So far as the other party is concerned, this will lead to unnecessary practical difficulty.

MR. A. HOOGEWERF: I want a point to be cleared. Suppose, during the interval of six months, if the good husband or the good wife takes it into his or her head to run away to South Africa or New Zealand with another woman or with another man, as the case may be, what will be the position?

MR. V. SUBBA AIYAR: He or she will be liable to the penalties under the Criminal Law, because the marriage has not been dissolved. That may occur even before the petition is filed. There will be the same difficulty as is now pointed out even then.

MR. A. HOOGEWRF: Is not the interval too long?

DEPUTY PRESIDENT: Do I understand you to oppose the amendment?

MR. A HOOGEWEREF: Yes, Sir, I oppose it.

MR. V. SUBBA AIYAR: After the petition is filed, the question of compensation and the decree annulling marriage should both be simultaneous. If not, as I said, while the petitioner gets what is wanted, the respondent does not.

LIBRARY ARCHIVES Kerala Legislative Assembly

[Mr. T. K. Velu Pillai.]

DEPUTY PRESIDENT: Both of them can remarry after the order of dissolution.

MR. V. SUBBA AIYAR: I would also say that the right of divorce is subject to a condition. Let us take the case of an ordinary suit for redemption of mortgage. The mortgagor has to pay money and redeem the property. The question cannot be settled by the mortgagor being allowed to recover the property and his liability for the amount being decided later on.

DEPUTY PRESIDENT: Do you really go further and say that the marriage should be dissolved only after the amount has been realised?

MR. V. SUBBA AIYAR: The question as to the liability of the person for the compensation must be settled. The section requires that he should offer compensation.

DEPUTY PRESIDENT: The liability is there but the extent of the libality has to be ascertained by the court.

MR. V. SUBBA AIYAR: If we adopt Mr. Paramesvaran Pillai's suggestion, the difficulty will be that we unnecessarily give an advantage to the petitioner over the respondent, because, the moment she gets divorce, the respondent has to fight out his case for the compensation. In other words, you give a decree in favour of the petitioner and keep the respondent's decree in suspense. That is rather hard.

MR. M. GOVINDAN: I also oppose the amendment. I think Mr. Paramesvaran Pillai began with the assumption that in this matter the Committee deviated from the provisions of the Nair Regulation. It was not so. The provision is only a reproduction of the corresponding section of the Nair Regulation. It was adopted in view of the custom obtaining in the community. The procedure followed in the case of divorce is noted in the committee's report. Usually, the custom is to hold a meeting of the chief men of the village who sit and decide the question and determine the amount of compensation. Before the divorce the amount is determined and the *Avakasapattukuri* executed. It is only after the execution of that document that the relationship ceases.

DEPUTY PRESIDENT: Is the payment also made?

MR. M. GOVINDAN: Yes, but not necessarily at once. If payment is not made, the amount determined is treated as a bond debt. When the amount is determined, an obligation is definitely created and the marital relationship ceases.

MR. A. HOOGEWERF: Then a reference to court is made unnecessary.

MR. T. K. VELU PILLAI: Sir, In the Marumakkathayam Committee's Report, there is a portion which is relevant to the discussion. On page 20, they say.

LIBRARY ARCHIVES Kerala Legislative Assembly

"We propose that an offer should be made in the notice, as in some cases such offer may be accepted, and that may obviate the necessity for enquiry. Where the sum offered is not accepted, but disputed, the amount due should be ascertained on taking evidence as to the means, position and circumstances of the parties, but, in no case, ought to exceed Rs. 2.000. In all cases, whether disputed or not, the Munsiff must pass a formal order of dissolution determining the compensation, if any, not earlier than six months from the date of service of the notice, during which time of course, the parties may compromise or the applicant withdraw his application. The Muniff's order should have the force of a decree under the Civil Procedure Code for purposes of execution and appeal, subject to payment of court fees on the amount adjudged or claimed, as the case may be".

It means the Munsiff will be justified in prolonging it further than six months. It is also open to him to call upon the parties to adduce evidence within six months.

DEPUTY PRESIDENT: You know that the machinery of courts moves rather very slowly.

MR. T. K. VELU PILLAI: It says that the adjudication should not be before the expiry of six months. I have referred to this portion because, I believe, it is relevant to the discussion.

MR. N. KUMARAN: Sir, it seems to me that Mr. Parameswaran Pillai's amendment deserves to be accepted. The difficulty that has been pointed out by Mr. Subba Aiyar, namely, that the respondent, who has to get compensation from the petitioner, will have to wait for a long time, for getting an order determining the amount that he has to obtain is not so serious as to necessitate the rejection of this amendment. In a case of this kind, where a petitioner has moved the court for an order for the dissolution of the marriage, he or she will have to offer as compensation an amount that he or she is willing to give the other side. If the respondent is not prepared to accept it but wants more, he will have to adduce evidence and prove his case. Since the burden of proof is upon him, he will have to adduce evidence and get an order in his favour. If there is any delay for getting such an order, the fault lies with the respondent and not with the petitioner. Further, it is desirable that, when the feelings between the parties are strained, the dissolution should be effected as early as possible. There is no necessity for compelling the two parties to remain in the position of married people when they are actually fighting in court for dissolution and compensation. I think the provision is a desirable one and would work satisfactorily. I, therefore, support it.

MR. P. K. NARAYANA PILLAI: I oppose the amendment, for, unlike the Nair Regulation, the present Regulation contemplates the case of a husband or a wife, as the case may be, who happens to be the petitioner, paying compensation to the other side. Suppose the petitioner

LIBRARY ARCHIVES Kerala Legislative Assembly

[Deputy President.]

offers a particular sum to be paid to the other side; suppose further the latter disputes the amount, and suppose the court ultimately upholds the contention and decrees that the petitioner should pay the amount claimed by the respondents. In such cases, the ascertainment of the amount to be paid by the petitioner may be made by the court or regarded by the parties to be a condition precedent to granting the dissolution prayed for. It may be that the petitioner, man or woman, may not agree to have the dissolution made conditional on paying the amount of money decreed by the Munsiff. The petitioner may withdraw from the whole transaction where, for example, the petitioner is the husband. If the Munsiff orders Rs. 1,999 to be paid as compensation, the husband may think that after all he does not want dissolution or cessation of marital hostilities to be purchased at such a prohibitive cost. It may be left to him whether he should accept a dissolution on such terms or not. (*Laughter.*) Therefore, it is not proper to pass a decree annulling marriage without telling the petitioner what he or she has to pay for it. So, I submit that, as the particular provision in the Bill stands, the ascertainment of the amount to be awarded is a condition precedent. Both sides may feel the necessity to appeal or even to withdraw from the proceedings in court. In these circumstances, whether this is a conscious departure from the Nair Regulation or not, in view of the provisions of this particular Bill, the clause in question seems quite all right.

DEPUTY PRESIDENT: The question is that clause 11 be amended in the form suggested by Mr. K. Paramesvaran Pillai.

The motion was put to the vote and lost.

DEPUTY PRESIDENT: The question is that clause 11 stand part of the Bill.

MR. P. K. NARAYANA PILLAI: I have some amendment to propose. I oppose the clause in its present form.

DEPUTY PRESIDENT: I do not think you are in order now. Of course, the Council would have been very thankful to you if you had offered any further suggestion and moved an amendment at the proper time.

MR. P. K. NARAYANA PILLAI: I am pointing out certain defects in the wording of the clause.

DEPUTY PRESIDENT: It may be. Please answer one question. Do you want the deletion of the clause in its entirety? Then you ought to move a formal amendment. At this stage, you can only oppose the Council adopting it. Only one of two courses is open to you. Either accept or reject it in its entirety.

MR. P. K. NARAYANA PILLAI: Then I oppose the clause *in toto*.

DEPUTY PRESIDENT: You are only in a minority of one.

LIBRARY ARCHIVES Kerala Legislative Assembly

MR. P. K. NARAYANA PILLAI: Yes; but let me have my say and see whether there is any one else to support me.

DEPUTY PRESIDENT: I have no objection to ascertain whether there are others who support you.

MR. P. K. NARAYANA PILLAI: If I am the only man, I do not want to raise the question.

MR. T. K. VELU PILLAI: I am disposed to think that Mr. P. K. Narayana Pillai is entitled to be heard in this connection and then we could see whether we could vote for the amendment or not.

DEPUTY PRESIDENT: Then he ought to have stood up and moved it.

MR. T. K. VELU PILLAI: He stood up.

DEPUTY PRESIDENT: I do not want to stifle criticism. I do not want to stand in the way of your helping the Council with your observation, Mr. P. K. Narayana Pillai; only, it should be against the House accepting the clause.

MR. P. K. NARAYANA PILLAI: So far as the latter portion of the clause is concerned, it is not clear. The direction for the payment of court fees may relate to execution as well as appeal. The provisions of the Civil Procedure Code that have been attracted to this Bill refer only to the question of execution and appealability of decrees. What I say is there may be cases in which an *ex parte* decree may be passed. There is no provision to set aside such an *ex parte* decree at the instance of the respondent. Then there may be cases in which the parties may find it advisable during the pendency of the proceedings to make up their differences. I should add that the petitioner, if so minded, may be granted the liberty to withdraw from it. These provisions are necessary so that the whole thing may be placed on the same footing as a regular decree. In the absence of these provisions, the whole clause will have to be objected to. I am bringing to the notice of the Council those objections which appear to me as capable of being remedied.

DEPUTY PRESIDENT: If you had brought forward a definite amendment at the proper time, it would have been considered by the Council. I am sorry it is late now.

I shall put the question once more. The question is that clause 11 stand part of the bill.

The motion was carried.

Clause 11 was added to the bill.

Class 12.

MR. K. P. RAMAN PILLAI: I beg to move that the words "as also the major unmarried daughters" be inserted between "children" and "shall" in line 1.

This is a simple alteration. I think that the father ought to be compelled to maintain major daughters also, if they remain unmarried. I do not think that there will be any objection to this amendment.

LIBRARY ARCHIVES Kerala Legislative Assembly

[Mr. V. Subba Aiyar.]

MR. N. PADMANABHA PILLAI: I second the motion.

MR. V. SUBBA AIYAR: I would have agreed to Mr. Raman Pillai's amendment, if only he had said that the father should maintain all his major and minor children, irrespective of age or sex. I do not know why he should be partial to daughters alone. I would have it extended to married and unmarried sons also. The amendment cannot be accepted for this reason. While, on the one hand, the father may be willing to maintain every one of his children and particularly major unmarried daughters, I do not think it would be proper to impose a legal obligation upon him to maintain a major daughter, especially when he cannot absolutely have any control over her after she becomes a major. Supposing the daughter leads a life which the father very much resents. Let us take an extreme case. Suppose she leads the life of a prostitute. The father has absolutely no control over that major daughter. He cannot complain, cannot do anything with reference to her; yet he should be under a legal obligation to maintain her. Or let us take another case, suppose a suitable husband is found by the father and she says, "I am not going to marry." Still the father should maintain her. Or supposing a suitable occupation was found for her, but she would not take it up, what should the father do? He cannot compel her to accept the occupation. So that, if we adopt the amendment, the result would be that the father should be under an obligation to maintain such a daughter, while he has no control over her conduct. In the case of minors, they are under the custody of their father and if anybody interferes he has got the support of the court. So, I do not think there should be any legal obligation on the father to maintain major unmarried daughters.

MR. T. K. VELU PILLAI: May I know whether in English law a son is not obliged to maintain his father and mother under certain circumstances?

MR. V. SUBBA AIYAR: I do not think there will be any such provision of law.

MR. T. K. VELU PILLAI: I do not want his opinion. I put it as a question as to a fact and I want an answer to that.

MR. V. SUBBA AIYAR: I am not aware of the existence of any such provision.

What I say is that these are the practical difficulties that a father will have to meet with, if he should be under an obligation to maintain his major daughters. As I said, so long as the daughter takes the advice of her father and does not give any room for her father to lose the natural affection that he may have for her, certainly every father will maintain his daughter however old she may be. But to cast upon him a legal obligation is fraught with very many difficulties. That is why we purposely omitted that provision, although Mr. Raman Tampi

LIBRARY ARCHIVES Kerala Legislative Assembly

drew our attention to the desirability of providing for the maintenance of major unmarried daughters by their father.

MR. N. RAMAKRISHNA PILLAI: How are the minor children controlled by their father? What is the special control exercised by the father?

MR. V SUBBA AIYAR: He has got all the control, because there is the guardianship for the father.

DEPUTY PRESIDENT: The law helps him.

RAO BAHADUR K. V. RANGASWAMI AIYANGAR: I wish to know whether the right of maintenance of chidren over the father is to be regarded as some kind of return to be made for the usefulness which he may expect from them.

DEPUTY PRESIDENT: That does not arise. Under the existing common law, the major children have no right to maintenance from their father. The minors have.

RAO BAHADUR K. V. RANGASWAMI AIYANGAR: Is that the existing law?

DEPUTY PRESIDENT: Yes; as embodied in the Criminal Prodcedure Code, where there is only a provision imposing a statutory obligation for the maintenance of minors who are unable to earn their livelihood. So far as the major children are concerned, there is no statutory obligation.

RAO BAHADUR K. V. RANGASWAMI AIYANGAR: I should like to know whether, in the case of unmarried girls, even if they become majors, there is not an obligation on their parent to maintain them.

DEPUTY PRESIDENT: I am not aware of any such statutory obligation at present.

RAO BAHADUR K. V. RANGASWAMI AIYANGAR: Whether there is statutory obligation or not, it seems to me that the position of such daughters is somewhat different from that of sons. I do not think that any kind of pressure ought to be placed upon unmarried girls to marry, whether they like or not, by being deprived of parental maintenance, which they regard as their natural right. Mr. Subba Aiyar has given the extreme case of a daughter conducting herself in an undutiful manner. It has been argued that, owing to paternal affection the father would, even in the absence of law, make adequate arrangements for the maintenance of his daughters. May I point out to the House that it is not a question of payment being made by a father to his daughters as a return for their natural obedience? My contention is that the duty of maintaining his children rests on the parent, irrespective of the good or bad conduct of those children. Children are not consulted before they are born. When persons become parents, they ought to be saddled with certain responsibilities. And one of these responsibilities is the maintenance of children, whether the parents are bound to provide for it under the criminal or civil law,

LIBRARY ARCHIVES Kerala Legislative Assembly

[Rao Bahadur K. V. Rangaswami Aiyangar.]

or not, and whether the children to be maintained are minors or not, For sons, there are greater facilities for earning a livelihood than for daughters. In support of his position, Mr. Subba Aiyar has taken concrete instances. I shall also suggest a concrete instance in support of my contention. It may happen that a lady may be quite willing to marry, but she may not be sufficiently attractive, and nobody wants to marry her. She is of weak health, or otherwise unqualified, and cannot get any kind of employment. What is to become of her, without maintenance? Even if a girl is provided with a certain amount of education, there is no certainty of her being able either to marry or to find an employment. It may be a case of the educated unemployed. What is to become of such a lady? Take another case. The father is a remarried widower with unmarried daughters. He is influenced by the step-mother or somebody else, and he wants his daughters to marry some persons whom they do not want to marry. They prefer to remain single. Is the threat of the withholding of maintenance to force them into matrimony?

I do not think the Council should give any ground to the belief that, in its view, girls should marry merely for the purpose of relieving the father of the duty of maintenance. In the particular case under discussion, a differentiation is attempted to be made between sons and daughters. In equity and for the good of the society, the law should be as follows. In the case of girls, the father must be made liable to maintain them till they marry. You may ask, what should be done if the father is a pauper? My reply is that there will be no possibility of pressure if the father is unable to maintain the children. On the other hand, if the father is affluent and able to maintain them, I submit, there is a moral obligation to maintain the children, even undutiful children, even girls who are not prepared to sumbit to parental discretion in the choice of husbands. That the husbands chosen by the parent are not accepted by his daughters should be no justification for him to refuse to maintain them. What we have to consider in this connection is merely the natural obligation of the father; the consideration of the attitude of the daughters is not relevant. Whether under the existing law there is any such obligation on the father or not, is also irrelevant. We are making a new law, and we are admittedly out to make improvements in the existing customs and laws in numerous ways. We do not profess merely to register in the Statute Book what has been accepted as custom, even as faulty custom. We are therefore free to make the equitable provision I am advocating. We can do so all the more readily, since we find that the natural obligation to maintain unmarried minor girls is already on the father. The extension is only to all unmarried daughters, major as well as minor. I do not think that the Council will dispute the justice of the claim. I therefore urge that we make a provision to that effect in the Bill.

LIBRARY ARCHIVES Kerala Legislative Assembly

MR. T. K. VELU PILLAI: I am also in favour of that view. If you are going to help unmarried daughters who have attained majority, is it not the duty of a father to maintain such daughters as are divorced by their husbands? Unmarried girls may at least have a good price in the marriage market. But the girls who are divorced by their husbands will find it very difficult to get a second husband or to maintain themselves. I think that some provision should be made to cover such cases. If that is done, I have no objection.

DEPUTY PRESIDENT: Then you will have to bring it in the form of an amendment.

MR. T. K. VELU PILLAI: I am just throwing out a suggestion and pointing out that equity is in favour of going a step further to give relief to these poor unfortunate class of people—the widows and those who are divorced by their husbands.

DEPUTY PRESIDENT: I want to know your position. Do you want to move an amendment?

MR. T. K. VELU PILLAI: I only throw out a suggestion.

MR. K. P. RAMAN PILLAI: I cannot accept Mr. T. K. Velu Pillai's suggestion for the simple reason that it is not necessary. The widowed daughter who comes back to her father's house will have brought something from her husband.

MR. T. K. VELU PILLAI: Suppose the husband is a man who had nothing to give.

MR. K. P. RAMAN PILLAI: I am only asking for a provision for ordinary cases. There may be hard individual cases. The Legislature cannot provide for those individual cases. Regarding the amendment itself, I have only to say a word. We had both sides of the picture painted, one by the Law Member and the other by Mr. Rangaswami Aiyangar. I have only to ask the members to look at this picture and that. As for the extreme cases which Mr. Subba Aiyar pointed out regarding an unmarried daughter living in adultery, there is the proviso that such a wife shall not be entitled to maintenance.

MR. V. SUBBA AIYAR: That is with reference to the wife's maintenance from the husband.

MR. K. P. RAMAN PILLAI: Furthermore, I cannot find much difference between the case of such misconduct on the part of a girl of 17 years and 11 months and of a major who has passed an extra month. So that, I cannot agree with the views of the Law Member as regards his line of demarcation regarding the capacity for misconduct. I stick to my amendment.

MR. V. SUBBA AIYAR: Sir, even after hearing the speeches of my friends who have just now spoken on the amendment, I am not inclined to change my position; for, in the case of a minor, the Penal Code has made ample provision, and anybody who unnecessarily interferes with the custody of the minor will be punished. The guardian is

LIBRARY ARCHIVES Kerala Legislative Assembly

[Rev. Fr. Kuriakose Vettikkapalli.]

entitled to the custody and control of the minor children. Apart from that, in the case of major daughters, I have only to state that, although the affection between the father and the daughter is not ordinarily judged by the amount of compensation and the amount of money payable by the one to the other, it is not desirable to impose upon a father the duty of maintaining his major daughters. I believe it is a necessary concomitant that there should be a correlative right in a father to have control over the daughter. Further, why should it be restricted to unmarried daughters, if the duty is founded upon affection? I would say that even married daughters who are very poor should be maintained. It will be admitted that the father is not bound to maintain such. The question of affection between the father and the children is not the question before us. The question is what is the sort of legal obligation that is to be imposed upon the father, whether that should be restricted to the case of minor children who are ordinarily presumed to be not in a position to earn their livelihood and for whose maintenance the father should be made responsible for having brought them into existence, or whether that should be extended to the case of major daughters who are supposed to be capable of earning their livelihood and to lead an honest life. In such a case, I cannot for a moment conceive of any distinction between a grown-up son who is under ordinary circumstances incapable of earning his livelihood and a grown-up daughter. The father may have put him to school ever so many times. Yet he may not acquire any service qualification. Nobody would entertain him in any service. In ordinary circumstances, the father may maintain such a dull son. But to cast a legal obligation to maintain that son is not legally sound. Similarly, in the case of a major daughter, however much the father may be willing to maintain her under ordinary circumstances, there could not be a legal obligation cast upon him. With these words, I oppose the motion and stick to my original opinion.

DEPUTY PRESIDENT: The question is that the words "as also the major unmarried daughters" be inserted between "children" and "shall" in line 1.

The amendment was put to the vote and lost.

The following amendments were not moved as they were substantially the same as the one which had just been disposed of.

MR. N. KUMARAN: Line 1. Insert "as also unmarried daughters" between "children" and "shall".

MR. N. RAMAKRISHNA PILLAI: Insert "as also unmarried major daughters" between "children" and "shall".

REV. FR. KURIAKOSE VETTIKKAPALLI: I beg to move that the words "or has renounced Hinduism" in line 4 be deleted. The reason for this amendment is the same as that I have given before in connection with clause 8. There the fact of renouncing Hinduism was considered as a greater sin than adultery. Here it is put

LIBRARY ARCHIVES Kerala Legislative Assembly

on a par with adultery. I have lost in the previous case. So I have no chance here. Still I beg to add that the amendment was brought forward to safeguard liberty of conscience which, as I submitted when I proposed the other amendment, is the greatest of liberties and against which the learned Law Member did not say anything when he opposed that amendment.

MR. V. SUBBA AIYAR: I did say that you were at liberty to safeguard your liberty of conscience: only you should not ask another to pay for it.

REV. FR. KURIAKOSE VETTIKKAPALLI: Liberty of conscience is that liberty by which we are allowed to follow the dictates of our conscience without incurring thereby any penalty. Here we have to pay a penalty. One party says to the other: "You do not get any compensation as you have lost your religion." So it is really a hindrance to liberty of conscience.

MR. A. HOOGEWERF: I second the motion.

MR. V. SUBBA AIYAR: I regret I am not in a position to accept the amendment for the reasons that I have already given with reference to clause 8.

Mr. A. Hoogewerf stood up to speak.

DEPUTY PRESIDENT: You are not entitled to speak now. You have already had your turn when you seconded the motion.

RAO BAHADUR K. V. RANGASWAMI AIYANGAR: May I suggest that the words "embracing another religion" be added?

DEPUTY PRESIDENT: We shall come to it after the present amendment is disposed of.

The question is that the words "or has renounced Hinduism" be deleted.

The amendment was put to the vote and lost.

MR. V. SUBBA AIYAR: Consistently with the amendment that has been made under Clause 8, I beg to move that the words "embracing another religion" be added after the word "Hinduism".

MR. N. KUMARAN: I second the motion.

DEPUTY PRESIDENT: Does anybody oppose it? There seems to be none.

The amendment was put and carried.

DEPUTY PRESIDENT: Now, do you like to move the other amendment, *viz.*, the substitution of words "the religion of her husband for "Hinduism"?

REV. FR. KURIAKOSE VETTIKKAPALLI: No.

DEPUTY PRESIDENT: There are two motions, one in the name of Mr. K. P. Raman Pillai and another in the name of Mr. Nidiry. For deleting the proviso, do you move the amendment, Mr. Nidiry?

MR. J. JOHN NIDIRY: Since the amendment proposed by the Rev. Fr. Kuriakose Vettikkapalli is more or less identical with mine,

LIBRARY ARCHIVES Kerala Legislative Assembly

[Mr. K. P. Raman Pillai.]

I do not propose to move the amendment myself. I may support it if it is moved by Mr. K. P. Raman Pillai.

MR. K. P. RAMAN PILLAI: I move that the proviso to clause 12 be deleted; and, in doing so, I should not be considered to be unaware of the attitude of the House towards the provision already made against the erring members of the community, *i. e.*, those members of the Ezhava community who change their religion. Of course, I am prepared to make a concession and modify my amendment in respect of that, seeing that the House has not demurred to accepting the amendment.

DEPUTY PRESIDENT: Am I to understand you to say that you do not propose to delete the proviso, but that you are coming forward with another amendment?

MR. K. P. RAMAN PILLAI: I am making the motion; but I am prepared to make some concession. I am now considering the merits of the provision. My submission is that an enquiry into the question of adultery and refusal to cohabit with husband ought not to be made. The proviso gives three reasons for succesfully refusing to give maintenance. The first is adultery. The second is the refusal to live with the husband. The third is renunciation of Hinduism. It is particularly in regard to the first two points that I urge the motion. Now, when we considered clause 9, we found that the question of adultery, or as to the matter of that, the reasons for the divorce, ought not to be considered by the court at all. The means, circumstances and position of the respondent alone should be considered and the questions of adultery and other grounds of divorce were deliberately excluded from the province of enquiry in a court of law on obvious grounds. The Marumakkathayam Committee have given their reasons very lucidly in their report:

> "The indecency of enquiry into allegations of adultery and the undoubted horror of the people for such enquiries are certainly good reasons for ignoring them."

They give a very vivid description of what would happen if such matters were enquired into in open court. We ought not to forget that there is nothing to prevent the publication in the newspapers of all that takes place in courts in regard to divorce proceedings. Following the opinion of the Marumakkathayam Committee, the Ezhava Law Committee have also concluded that the reasons for divorce ought not to be the subject of enquiry in courts. When a decree for dissolution has been granted, it is final. The dissoultion of marriage is the most important step in one's married life. While the question of maintenance is a matter of daily occurrence, very often people may quarrel at home for light reasons. I think the section will be very often resorted to by people who do not want to take the extreme step of dissolution which would be avoided as far as possible. I submit that, under such circumstances, the above matters ought not to be allowed to be enquired into by the courts. Otherwise the object of the legislature will be frustrated. I

LIBRARY ARCHIVES Kerala Legislative Assembly

therefore move for the deletion of the proviso, except to the extent the House has already disposed of.

MR. P. K. NARAYANA PILLAI: I am prepared to give my support with respect to one aspect of the amendment.

DEPUTY PRESIDENT: Such partial support would not help. You may either accept or oppose or be neutral. After supporting or opposing the amendment, you must come forward with your amendment. I shall give you permission.

MR. J. JOHN NIDIRY: I support the amendment.

MR. A. GOVINDA MENON: The amendment will, I suppose, only relate to the portion that has not been already dealt with. In that case, I support it. I gave my reasons clearly at the time I moved my amendment to clause 8. I brought forward that amendment because I found the expression in this clause.

DEPUTY PRESIDENT: Nobody seconded you.

MR. P. K. NARAYANA PILLAI: I am rising to support the amendment to some extent. I fail to appreciate the argument from the Chair with respect to partial support. The motion itself originally comprised three heads. It has now been reduced to two. I am prepared to support one of such heads. (*Laughter.*)

DEPUTY PRESIDENT: You may do one thing. You can support the amendment according to your own judgment. I shall put to the vote each of these separately.

MR. P. K. NARAYANA PILLAI: The particular head to which my support goes is this. Maintenance according to this particular clause is denied to a wife who refuses to live with her husband.

DEPUTY PRESIDENT: Without just cause.

MR. P. K. NARAYANA PILLAI: What exactly would amount to just cause is the difficulty. Let us take, for example, the case of a junior member of an Ezhava *tarwad*. He marries from another family and wants his wife to go and live with him. Suppose the *karanavan* objects to the introduction of a stranger into his *tarwad*. The wife certainly cannot gain any entrance there. The junior member probably cannot influence the *karanavan* of his own *tarwad*. In such cases, the wife would find it rather difficult to live with her husband. Again, say, the junior member is not living in his own *tarwad*. He chooses to live in a third party's house and wants the wife to live with him and the wife declines to go and live with him. Whether it would amount to a just cause or not may be a question on which difference of opinion is possible. In such cases, it is necessary to define what is considered to be a just cause.

DEPUTY PRESIDENT: We are to rely on the judgment of the civil court for determining whether a particular set of facts would constitute just cause. The legislature cannot attempt to enumerate exhaustively all the circumstances which would constitute a just cause.

LIBRARY ARCHIVES Kerala Legislative Assembly

[Mr. V. Subba Aiyar.]

MR. P. K. NARAYANA PILLAI: Quite so. Since it is difficult to attempt an exhaustive definition, we may do without this wax-like expression "just cause". The intention of the legislature may be one thing; the interpretation of the courts may be another thing.

DEPUTY PRESIDENT: I think you are not at liberty to make that observation.

MR. P. K. NARAYANA PILLAI: What I mean to point out is that, in inserting this phrase, we have ourselves no definite notion of its scope. Naturally the civil courts are not confined to follow any provision in interpreting the expression "just cause", as what is conceived by the members of the community may not be the "just cause" of the courts. In view of these difficulties, maintenance should not be refused to a wife except on the ground of adultery and renunciation of Hinduism which is a tacit condition for the continuance of the marriage.

MR. V. SUBBA AIYAR: When I read Mr. Raman Pillai's amendment this morning, it struck me that there was something in the clause which required amendment, because there is not the slightest doubt that the framers of the Nair Regulation and the Ezhava Law Committee had in view that the questions relating to adultery and kindred matters ought not to form the subject of discussion in a court of law and that therefore an enquiry under that head should be scrupulously avoided. It was for that reason that this question was avoided in connection with the provisions for dissolution of marriage and divorce. The very same reasoning does not seem to have weighed in respect of suits for maintenance. The effect of it is that some dirty linen will have to be washed. Supposing, in a suit for maintenance, the husband succeeds in establishing the adultery of his wife and he is relieved of maintaining her, the marriage is not dissolved on that account. The very next day, a petition for dissolution of marriage is put in by the husband, and he will have to pay Rs. 2,000 as compensation, although it has been found by a court of law that the woman was guilty of adultery and is not entitled to maintenance.

DEPUTY PRESIDENT: It is only a small sum that is fixed.

MR. V. SUBBA AIYAR: Let it even be one rupee. After the court accepts the contention of the petitioner on the facts placed before it, it is rather awkward that in such cases compensation should be paid again. If in the case of dissolution of marriage you cannot go into the question of the adultery of the woman, it is equally necessary that in an enquiry for maintenance you should not go into that question. This point did not strike any of the members of the Select Committee; so that the first portion requires a little amendment.

I cannot accept Mr. Raman Pillai's suggestion as regards the second portion, *viz.*, refusal to live with the husband without just cause. I am entirely at variance with him in the matter. The *karanavan* may refuse to take the nephew's wife into the house. The question there will be whether the nephew's wife or the son's wife will be the stranger.

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According to the custom among Ezhavas, soon after the marriage the wife lives with the husband. She has got a right to live there. The nephew has got a right to take her to the house and the *karanavan* has no justification for saying that she cannot be admitted. As for one or two cases cited by my friend Mr. P. K. Narayana Pillai, they are all cases which will be considered by the court whether they constitute a "just cause" or not. Each party will put forth arguments to establish what he or she considered to be just cause. In such cases, it will be for the court to decide the question. So I object to the deletion of the second portion.

With reference to the question of adultery, there seems to be some force in Mr. Raman Pillai's arguments, and I leave the question to be decided by the Council. He need not offer any compensation to Government for accepting his amendments. They have absolutely no interest in the matter. That will be evident from what is taking place in the House. Mr. Rangaswami Aiyangar, for instance, has been on some occasions suggesting amendments.

MR. T. K. VELU PILLAI: I wish to accord my support to the amendment; but in going against Mr. Subba Aiyar's views, I shall support my position with the philosophy of his own reasoning. He has generously conceded that in cases of adultery the suffering parties should be entitled to merciful consideration. Adultery, Sir, is a very serious defect. Defects are either moral or physical. If the principle suggested in the case of adultery is accepted, then certain physical defects ought to be covered. Take the case of a leper. The wife may on certain occasions refuse to live with her leper husband. Leprosy to some people is a revolting disease. But there are other diseases.

DEPUTY PRESIDENT: Will it be a case of just cause?

MR. T. K. VELU PILLAI: There are other diseases, tuberculosis, for instance, which are not less dangerous than leprosy because they are more insidious. So far as society is concerned, a wife's residence with such a husband will be very serious in its results. At the same time, it must be remembered that a man marries in order that he may be looked after when he is ill. So there will be conflicting contentions. If we leave this question to be decided by courts, I think that the courts, as has been already pointed out, may sometimes travel beyond the section, as the High Court sometimes does.

MR. V. SUBBA AIYAR: I rise to a point of order. I object to the remarks about the High Court.

MR T. K. VELU PILLAI: I am entitled to make that observation because it is to the country's interest that the High Court administers the law that we lay down. That is the question here. I do not say anything defamatory or illegal. I say this in perfect good faith and I am warranted in saying so. I may request Mr. Subba Aiyar who raised the objection to tell me why I should not say so. I am also practising before the High Court as a lawyer like Mr. Subba Aiyar. But,

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[Mr. K. P. Raman Pillai.]

I think that a member of this Council should have sufficient independence of judgment to enable him to say that, if the High Court travel beyond the sections of the law, they are certainly in the wrong.

MR. V. SUBBA AIYAR: May I point out that he cannot under the rules attribute motives to the conduct of courts of law or make reflections upon courts of justice?

MR. T. K. VELU PILLAI: It is not on their conduct but upon their view.

DEPUTY PRESIDENT: Will you please sit down so that I may understand Mr. Subba Aiyar

MR. T. K. VELU PILLAI: I am offering an explanation.

MR. V. SUBBA AIYAR: Under Rule 25, no member can make a reflection upon courts of justice.

DEPUTY PRESIDENT: It is not exactly a reflection. It is an *obiter dictum*. Do you, Mr. Velu Pillai, intend any reflection upon the conduct of courts of justice? Do you question the motive of the High Court?

MR. T. K. VELU PILLAI: I do not question motives. Every court, not only our High Court, even the Judicial Committee, may sometimes go beyond the section. As a man I have a right to say that a particular view is wrong. That is not a reflection upon the conduct of the High Court.

MR. V. SUBBA AIYAR: He said that our High Court often travels beyond the law. It is that that I object to.

MR. T. K. VELU PILLAI: As my learned friend Mr. P. K. Narayana Pillai said, our High Court as well as other High Courts sometimes travels beyond the section. I maintain every word of it in as emphatic a manner as I can. I shall not be justified in taking up the further time of this Council in pursuing this point. But, for reasons already given, I support the amendment.

MR. K. P. RAMAN PILLAI: I thank the Law Member for kindly accepting a third of my amendment. I appeal to him to accept the second part also, about which my friend Mr. P. K. Narayana Pillai spoke a little while ago, *i. e.*, the deletion of the clause relating to the refusal of the wife to live with her husband without just cause. Besides the vagueness of the term and the unlimited scope for enquiry that the expression itself offers, there is the further objection, *viz.*, that sexual incapacity may be considered to be a just cause for refusing to live with the husband. Both the Marumakkathayam Committee and the Ezhava Law Committee put sexual incapacity in the same category as adultery. In paragraph 29, the Marumakkathayam Committee states as follows:

"An enquiry into a charge of adultery, whether in divorce proceedings or in a subsequent suit by the wife for maintenance, would result in public revelations of the frailty of domestic life, which would be obnoxious and repulsive to the public feeling of the community concerned and therefore against public policy".

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The object of preventing an enquiry into adultery, as proposed by the Law Member, would be defeated by allowing an enquiry into sexual incapacity which will be the result of retaining the provision. I think that, for the same reasons as adduced by Mr. Subba Aiyar in the case of adultery, he should accept this second part of the amendment as well as the third part.

MR. V. SUBBA AIYAR: Even after hearing Mr. Raman Pillai, I am not prepared to change my view for this reason, and more strongly. The husband is not under any obligation to maintain his wife if she refuses to live with him without just cause. It is a question of maintenance that we are considering, maintenance for a few months. It is open to him or her to move the divorce court to have a divorce effected so long as the relationship lasts. I do not see why the husband should not be under that obligation unless the wife refuses to live with him without a just cause. If the wife wants to live apart and live a more costly life, why should she be maintained by the husband unless it is for a just cause? I do not think any question of propriety or justice arises here. Whatever a man's allegations may be for a divorce, he need not give any reason and he can get a divorce. So long as he is not prepared to go to a divorce court, he should pay maintenance.

DEPUTY PRESIDENT: I shall take these two parts separately. The third part is concluded. I drew attention to the fact that this amendment would comprise only the first two parts.

The question is that the words "if she lives in adultery" in the proviso to the clause be deleted.

The amendment was put to the vote and carried.

DEPUTY PRESIDENT: The question is that the words "or refuses to live with the husband without a just cause" be deleted.

The amendment was put to the vote and lost.

MR. A. HOOGEWERF: I beg to rise to a point of order. When I seconded Fr. Vettikkapalli's amendment and sat down, I was under the impression that I would be given an opportunity of speaking. This is an important question and I beg that I may be permitted to have my say in the matter.

DEPUTY PRESIDENT: What is it that you want?

MR. A. HOOGEWERF: I do not want to oppose the amendment. I only want to have my say.

DEPUTY PRESIDENT: I shall give you a chance of doing so. When I put the whole clause to the vote, you can speak.

The question is that clause 12 as amended by the Council stand as part of the bill.

Now, Mr. Hoogewerf, you can just oppose and have your say.

MR. A. HOOGEWERF: Change of faith should not be a hindrance to a person getting his right which he would otherwise get. Neither the Select Committee nor the Ezhava Law Committee has thought it necessary to impose a similar restriction in regard to intestate succession (Part

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[Mr. A. Hoogewerf.]

IV). I certainly do not blame them for the inconsistency. Deleting this clause will make the enactment consistent throughout. The Christian Committee's report shows that in the case of the Neyyattinkara Ezhavas conversion to Christianity does not entail forfeiture of any rights. Justice Mr. Hunt says in the case reported in 22 T. L. R. 246, at page 240, that among the Shanars, a closely allied community, change of religion works no forfeiture of the civil rights of the convert in his original family. The British Indian Act, 21 of 1850, conserves the rights of converts to their family properties. Our High Court has already recommended in the decision, quoted above, that that enactment may with advantage be adopted in our Statute Book, as stated by Mr. Govindan. It is now 34 years since that recommendation was first made, but nothing has been done in this direction. This is bad enough. What is now proposed is just the contrary. I cannot resist the temptation to quote Justice Mr. Hunt, where he says that "Educated Travancore ought, by this time, to be prepared to take a more liberal view of a man's change of religion"; and he said this 17 years ago. How much more educated and more liberal must Travancore have become to-day? Mr. K. P. Raman Pillai has deleted those words in his new Nair Bill. I would, therefore, propose that the words "or has renounced Hinduism" from the proviso be deleted.

The motion that clause 12 as amended stand part of the bill was then put to the vote and carried.

Clause 12 was added to the bill.

The Council adjourned at 5 P. M.

S. PARAMESVARA IAYAR,
Secretary to the Legislative Council.

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